

No. 14877

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United States  
Court of Appeals  
for the Ninth Circuit

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HAROLD D. PADDOCK, Appellant,

vs.

FLORENCE PADDOCK, Appellee.

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Transcript of Record

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Appeal from the District Court for the District of Alaska,  
Third Division

FILED

MAR 20 1956

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Appellant

DAVIS, RENFREW & HUGHES,

Box 477,  
Anchorage, Alaska,

Attorneys for Appellee



In the District Court for the Territory of Alaska,  
Third Division

No. A-8926

FLORENCE PADDOCK,                      Plaintiff,

vs.

HAROLD D. PADDOCK,                      Defendant.

COMPLAINT

Comes now the above named plaintiff, and for her cause of action against the defendant above named, complains and alleges as follows:

I.

That plaintiff is now and for more than two years immediately preceding the commencement of this action has been, a bona-fide resident and inhabitant of the Territory of Alaska, and now resides at Anchorage, Territory of Alaska.

II.

That plaintiff and defendant intermarried at Wasilla, Territory of Alaska, on or about the 14th day of January, 1938, and ever since said date have been and now are wife and husband, respectively.

III.

That no children have been born the issue of the marriage of plaintiff and defendant, but that the parties have raised the daughters of the plaintiff

by a former marriage, namely, Jacquelyn Paddock, now of the age of eighteen years, and Arlene Paddock, now of the age of nineteen years.

#### IV.

That there is a question of property rights here presented to the Court for determination.

#### V.

That there is an incompatibility of temperament existing between the plaintiff and the defendant, in the following particulars, to-wit: That the likes and dislikes of the parties are greatly divergent, so that there has been a great deal of arguing and bickering between the parties about all manner of things; that the plaintiff and defendant have no common interests or desires; and that defendant has been critical and fault-finding in his conduct toward plaintiff. That such incompatibility of temperament has existed for some time prior hereto, and as a result thereof plaintiff and defendant separated during the month of October, 1952, and have not since lived or cohabited together as wife and husband. That as plaintiff believes and so alleges the fact to be, it will never be possible for plaintiff and defendant to live together amicably as wife and husband, and there is no possibility of a reconciliation between them. That plaintiff has at all times since said marriage endeavored to resolve the differences between the parties and is without fault in the matter.



Wherefore, plaintiff prays for judgment as follows:

(1) That the bonds of matrimony heretofore and now existing between the plaintiff and the defendant may be set aside and held for naught.

(2) That the property rights of the parties hereto may be determined by the Court.

(3) For such other and further relief as to the Court shall seem meet and equitable in the premises.

DAVIS, RENFREW & HUGHES,

Attorneys for the Plaintiff

/s/ By EDWARD V. DAVIS

Duly Verified.

[Endorsed]: Filed July 23, 1953.

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[Title of District Court and Cause.]

## ANSWER AND COUNTER-CLAIM

Comes now the defendant in the above-entitled cause and answering the Complaint herein, alleges:

### I.

Defendant admits the allegations of paragraphs I, II, III and IV of the Complaint herein.

### II.

Defendant admits the allegation of paragraph V of the Complaint herein that there is an incompatibility of temperament existing between the parties;

defendant denies each and every other allegation contained in said paragraph V, and specifically denies that the plaintiff has endeavored to resolve any differences between the parties, and denies that plaintiff is without fault in the matter.

### Counter-Claim

And for a Counter-Claim or a Cross-Action against the plaintiff, defendant alleges:

#### I.

That defendant is now and has been for more than two years prior to the commencement of this action, a bona fide resident and inhabitant of the Territory of Alaska, living and residing at Anchorage.

#### II.

That defendant and plaintiff were married on the 14th day of January, 1938, at Wasilla, Alaska, and are still married.

#### III.

That no children have been born as the issue of this marriage.

#### IV.

That there are conflicting interests between the parties in property acquired during the marriage which should be determined by the Court.

#### V.

That there is an incompatibility of temperament existing between the plaintiff and the defendant, in

that animosity has grown between them over a variety of matters during the past several years; that the plaintiff has been extravagant and unco-operative in the recent course of their married life and has harrassed and injured defendant in the conduct of his business; that the plaintiff has been guilty of misconduct with other persons of a nature to cause defendant humiliation and embarrassment with another person or persons; that as a result of the plaintiff's misconduct, it has become impossible for them to live together peacefully as husband and wife; that defendant has at all times conducted himself as a reasonable person and is without fault.

Wherefore, defendant prays:

1. That plaintiff take nothing by virtue of her complaint and that the same be dismissed.
2. That defendant be granted an absolute divorce from plaintiff on his counter-claim herein, and that the marriage of the defendant and plaintiff be dissolved and held for naught.
3. That the property rights of the parties be adjudged and determined by the court.
4. For such other and further relief as shall be just.

KAY, ROBISON & MOODY,

Attorneys for Defendant

/s/ By WENDELL P. KAY

Duly Verified.

Acknowledgment of Service attached.

[Endorsed]: Filed Nov. 20, 1953.

[Title of District Court and Cause.]

MOTION FOR TEMPORARY RESTRAINING  
ORDER AND FOR ORDER TO SHOW  
CAUSE

Comes now the defendant above named, by and through his attorneys, Kay, Robison & Moody, and moves the Court for an order directing the plaintiff herein to appear and show cause at 4:30 o'clock p.m., on the 24th day of November, 1953, or as soon thereafter as counsel can be heard, why she should not be ordered, restrained and enjoined as follows:

1. From entering on or about the premises or building known as Paddock's Paint and Furniture Store, at 812 Fourth Avenue, Anchorage, Alaska;
2. From interfering with the conduct of said business; and
3. From harrassing and annoying defendant and the employees and customers at said place of business.

KAY, ROBISON & MOODY,  
Attorneys for Defendant

/s/ By WENDELL P. KAY

Acknowledgment of Service attached.

[Endorsed]: Filed Nov. 20, 1953.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND FOR ORDER TO SHOW CAUSE

United States of America,  
Territory of Alaska—ss:

Harold D. Paddock, being first duly sworn, deposes and says:

That he is the defendant in the above-entitled cause and has verified the Answer and Counter-Claim heretofore filed by him in this action; that he is the owner and manager of Paddock's Paint and Furniture Store, at 812 Fourth Avenue, Anchorage, Alaska; that he and the plaintiff herein have been separated since about the first of the year 1953, during which time the plaintiff and defendant have been attempting to arrange for a peaceful settlement of their differences over the property owned by either of them and acquired during their marriage. That defendant has always been the owner and manager of the said business, and it has been and now is in his name; that the plaintiff has taken little, if any, interest in the operation or management of the business and is not familiar with it, nor is she capable of managing and operating the said business; that during the year 1953, at various times, particularly when negotiations for a property settlement have been deadlocked, plaintiff has come into the store and attempted to usurp or take over the management and operation of the



business; that during the past several days, plaintiff has again entered the store on several occasions, attempted to deal with customers in the store as though she were the proprietor thereof, has informed employees that she is "taking over the business" and otherwise conducted herself in such a manner as to confuse the customers and employees of the business; that the aforesaid conduct of the plaintiff is not in any way intended to assist in the successful management of the business, but is intended to harrass and annoy defendant and force him to accede with her wishes with regard to a property settlement; that the effect of this conduct is to cause unrest and dissatisfaction among the employees, annoyance to the customers and a consequent disastrous effect upon the business; that the plaintiff will, unless restrained, continue to employ these harrassing techniques to the loss of all parties concerned.

/s/ HAROLD D. PADDOCK

Subscribed and sworn to before me this 18th day of November, 1953.

[Seal]           /s/ WENDELL P. KAY,  
Notary Public in and for Alaska

Acknowledgment of Service attached.

[Endorsed]: Filed Nov. 20, 1953.

[Title of District Court and Cause.]

## ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon reading the Answer and Counter-claim of the defendant, on file herein, the Motion of Kay, Robison & Moody, Counsel for defendant, and the affidavit of Harold D. Paddock in support thereof, and good cause appearing therefrom,

It is hereby ordered as follows:

1. That the plaintiff appear and show cause on the 24th day of November, 1953, at 4:30 o'clock p.m., of said day, or as soon thereafter as Counsel can be heard, before the above-entitled Court, why she should not be ordered, enjoined and restrained as follows:

a. Restrained and enjoined from entering on or about the premises or building known as Paddock's Paint and Furniture Store, at 812 Fourth Avenue, Anchorage, Alaska;

b. Restrained and enjoined from interfering with the conduct of said business.

c. Restrained and enjoined from harrassing and annoying defendant and the employees and customers at said place of business.

2. That a copy of the Answer and Counter-claim and Motion for Temporary Restraining Order and for Order to Show Cause and supporting affidavit be served upon the plaintiff forthwith, and at least three days before said date of hearing.

3. That it appears that the plaintiff is presently harrassing and annoying defendant at the premises or building known as Paddock's Paint and Furniture Store; that unless plaintiff is restrained and enjoined from continuing, the business will suffer irreparable damage, and it is further ordered:

4. That until the hearing upon said Order, and until further Order herein, the plaintiff, her attorneys, agents and servants are hereby

a. Restrained and enjoined from entering on or about the premises or building known as Paddock's Paint and Furniture Store, at 812 Fourth Avenue, Anchorage, Alaska.

b. Restrained and enjoined from interfering with conduct of said business.

c. Restrained and enjoined from harrassing and annoying defendant and the employees and customers at said place of business.

/s/ J. L. McCARREY, JR.,

Judge of the District Court

Acknowledgment of Service attached.

[Endorsed]: Filed Nov. 20, 1953.

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[Title of District Court and Cause.]

### ANSWER TO COUNTERCLAIM

Comes now Florence Paddock the above named plaintiff and in answer to the counterclaim of the defendant, admits, denies and alleges as follows:



## I.

Plaintiff admits the first, second, third and fourth paragraphs of defendants counterclaim.

## II.

Plaintiff denies each and all of the allegations of the fifth paragraph of defendant's counterclaim insofar as such allegations differ from the allegations contained in plaintiff's complaint. Plaintiff specifically denies that she has been extravagant, unco-operative or that she has harrassed or injured defendant in the conduct of his business. Plaintiff further denies that she has been guilty of misconduct in any manner whatsoever and alleges that the trouble between the parties arises from misconduct of the defendant over a period of several years.

Wherefore, having fully answered defendant's counterclaim, plaintiff prays that defendant take nothing thereby and that plaintiff may have and recover judgment and decree in this matter according to the allegations of her complaint.

DAVIS, RENFREW & HUGHES,  
Attorneys for Plaintiff

/s/ By EDWARD V. DAVIS

Duly Verified.

Acknowledgment of Service attached.

[Endorsed]: Filed Nov. 24, 1953.

[Title of District Court and Cause.]

### OATH OF MASTER

Harry Godchaux, being first duly sworn on oath, deposes and says:

I do solemnly swear that I will support the Constitution of the United States and the laws of the Territory of Alaska, and that I will faithfully discharge the duties of Master in the above entitled action to the best of my ability, and that I will obey the orders of this Court, or the Judge thereof, in respect thereto.

So help me God.

/s/ HARRY GODCHAUX

Subscribed and sworn to before me this 23rd day of December, 1953.

[Seal]        /s/ LOUISE STRAHORN,  
Deputy Clerk, U. S. District  
Court

Approved:

/s/ J. L. McCARREY, JR.  
District Judge

[Endorsed]: Filed Dec. 23, 1953.

[Title of District Court and Cause.]

MOTION TO REOPEN CASE AND TO SET  
ASIDE ALL PREVIOUS ORDERS MADE

Comes now the above named Defendant, Harold D. Paddock, by and through his attorneys of record, Bell & Sanders, and moves this Honorable Court for an Order to Reopen this case for further testimony and to Set Aside all Previous Orders made in said case, and for grounds states:

That the Defendant is informed and believes, and is quite confident that he can prove by a preponderance of the evidence that the Plaintiff is living in adultery with a man in the City of Anchorage in the home property of this Defendant, and that an immoral contact and relationship between the Plaintiff and this other man has been going on from a time prior to the separation of this Defendant and the Plaintiff;

The Defendant further expects to show to the Court the true value of all of the property belonging to the Defendant;

The Defendant further expects to show that there never was any semblance of partnership between the Plaintiff and the Defendant;

That the Plaintiff never really worked steadily even as a clerk in the Defendant's business, but most of the time she was there to cause trouble and disturbances, and very often created scenes in the store very detrimental to the Defendant and to his business;

This Defendant further will be able to show to the Court the actual value of the properties that he owned prior to the marriage, which have grown into large values by reason of the natural enhancement of property in Anchorage, and through no effort whatsoever on the part of the Plaintiff, and the values of which are now included as a part of the properties of the Defendant, or are a part of which have been sold and the money used to enhance the value of the Defendant's assets;

The Defendant further expects to prove that by the Plaintiff's conduct, he was driven from his home and forced to seek living quarters in the store building where he operated the paint and furniture business, which property is a part of the Defendant's present estate, and was at that time.

Dated at Anchorage, Alaska, this 25th day of January, 1954.

BELL & SANDERS,

/s/ By BAILEY E. BELL,

Attorneys for Defendant

Duly Verified.

Acknowledgment of Service attached.

[Endorsed]: Filed January 26, 1954.

[Title of District Court and Cause.]

HEARING ON MOTION TO RE-OPEN CASE  
AND SET ASIDE ALL PREVIOUS OR-  
DERS MADE

Now at this time hearing on motion to re-open case and set aside all previous orders made came on regularly before the Court, in caunse No. A-8926, entitled Florence Paddock, Plaintiff, versus Harold D. Paddock, Defendant, the plaintiff represented by Edward V. Davis, of her counsel and the defendant represented by Bailey E. Bell, of his counsel. The following proceedings were had, to-wit:

Argument to the Court was had by Bailey E. Bell, for and in behalf of the defendant.

Argument to the Court was had by Edward V. Davis, for and in behalf of the plaintiff.

Whereupon the Court having heard the arguments of respective counsel and being fully and duly advised in the premises, announced it would reserve its decision in this cause.

Entered Journal June 25, 1954.



[Title of District Court and Cause.]

M. O. DENYING MOTION TO RE-OPEN CASE  
AND TO SET ASIDE ALL PREVIOUS  
ORDERS MADE

Now at this time, arguments having heretofore been had on the 25th day of June, 1954 in cause No. A-8926, entitled Florence Paddock, plaintiff, versus Harold D. Paddock, defendant.

Whereupon, Court now denies motion to re-open case and set aside all previous orders made.

Entered Journal July 28, 1954.

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[Title of District Court and Cause.]

MEMORANDUM OPINION

John Edward J. Davis, attorney for Plaintiff.

Bailey E. Bell, attorney for Defendant.

The plaintiff, Florence Paddock brings this action for divorce upon the grounds of incompatibility and asks the court to determine the property rights of the parties.

In answer thereto, the defendant, Harold D. Paddock, admits the allegations of the complaint including the incompatibility of temperament but denies the remainder of that paragraph and then counterclaimed himself for a divorce likewise alleging incompatibility, and in addition thereto he alleges mis-conduct on part of plaintiff and alleges

that he has at all times conducted himself as a reasonable person and is without fault.

In reply to the Counterclaim the plaintiff admits all but the allegations of incompatibility which she denies insofar as such allegations differ from the allegations contained in her complaint and specifically denies the balance of the paragraph of her misconduct and alleges that the trouble between the parties arise from the misconduct of the defendant.

Subsequent to the completion of the trial in its entirety, the defendant by and through another attorney, filed a "Motion to Reopen the Case and to Set Aside All Previous Order Made," for the reason that the defendant \* \* \*" is informed and believes and is quite confident that he can prove by a preponderance of the evidence that the plaintiff is living in adultery with a man in the City of Anchorage \* \* \*" which motion was denied.

After opening statements had been made and the first witness had nearly completed her testimony counsel for the litigants orally stipulated that the defendant would not attempt to rebutt the incompatibility testimony given by the plaintiff and further stipulated that the only remaning segment of the action to be considered by the court was one of property determination of the parties.

I find that the plaintiff has sustained the burden of proof and that she is entitled to a divorce from the defendant.

Both plaintiff and defendant devoted their full time to the development of the business which they now own and, therefore, since there were no ex-

tenuating circumstances presented to the court, I find that each party is entitled to one-half of the real and personal property they acquired since marriage.

I find that the defendant had an investment in their present business of \$10,000.00, prior to the time plaintiff married the defendant.

I find that the plaintiff should have the furniture, house and lot known as Lot 3, Block 108, of the original townsite of Anchorage, Alaska, wherein the plaintiff now resides, at 226 East 7th, and that the value of said house is \$20,000.00.

I find that defendant should have the business, building and lot known as Paddock Paint & Furniture Store situate, lying and being, on Lot 2, and the East one foot, of Lot 3, in Block 39, of the Original Anchorage Townsite, subject to a one-half interest of the plaintiff. Such interest of the plaintiff shall be determined by three appraisers, one appraiser to be appointed by the plaintiff and one by defendant, and these two in turn to appoint a third and the decision reached by any two of the three appraisers shall be final. In arriving at the respective interests of the parties the appraiser shall take into consideration operating cost, taxes, etc., up to December 31, 1953. I further find that it would be to the best interest of both plaintiff and defendant that the defendant purchase the plaintiff's interest in and to said business at the price determined by the appraisers, aforesaid, and that one-fifth of the total purchase price to be paid to the plaintiff within 60 days after the entry of this



opinion and the balance in 48 equal monthly installments with 6% interest per annum on the remaining unpaid balances.

The appraisers are hereby instructed to first deduct from the plaintiff's interest in and to said business the sum of \$30,000.00 which is the amount found to be that interest the defendant had in and to said business before he married the plaintiff and the value of Lot 3, of Block 108, of the Original Townsite (*supra.*).

I find that both plaintiff and defendant are entitled to a monthly wage of \$700.00 each for the entire year 1953 and that the plaintiff and defendant shall be credited or debited such sum in accordance with their drawings for that year, as the books of the company will reflect, but should the books reveal that one of the parties, either through money or any other thing of value, may have withdrawn or appropriated a sum in excess of \$8,400.00 for the year 1953, allowed for wages of the parties, aforesaid, then such excess shall be taken into consideration by the appraisers in arriving at the value of the respective interests of the parties in the Paddock Paint & Furniture Store business.

I further find that the plaintiff and defendant are each entitled to a one-half undivided interest in and to all of the remaining real and personal property belonging to them as of December 31, 1953. I further find that if either party has appropriated or disposed of any real or personal property which was acquired during coverture, either prior or subsequent to the filing of the divorce proceedings

(without accounting for the same to the other party), the appraisers are hereby instructed to take such facts into consideration, when determining the value of the plaintiff's and the defendant's interest, in and to the business owned by the parties, and the appraisers are hereby empowered to take whatever steps may prove necessary to discover said assets of the parties.

While plaintiff made application to the court for temporary support and maintenance and attorney fees, I find from the record that only the restraining order was signed and that the cause went to trial before the support and maintenance and attorney fees were determined by the court.

I find that the plaintiff is entitled to receive from the defendant \$500.00 per month, for temporary support from January 1954 until October 31, 1954, and that this sum should be paid to plaintiff forthwith. I further find that the plaintiff is not entitled to alimony but that she is entitled to attorney fees in the sum of \$475.00 and usual court costs.

Findings of fact and conclusions of laws and decree may be prepared in accordance with the foregoing.

Dated at Anchorage, Alaska, this 8th day of October, 1954.

/s/ J. L. McCARREY, JR.  
District Judge.

[Endorsed]: Filed Oct. 8, 1954.

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for hearing at the court room of the above entitled Court at Anchorage, Alaska on the 22nd day of December, 1953, before the Honorable J. L. McCarrey, Jr., District Judge, sitting as a Court of equity and without the aid of a jury. The plaintiff Florence Paddock was personally present in Court together with Edward V. Davis, one of her attorneys. The defendant Harold D. Paddock was likewise personally present in Court together with Wendell P. Kay, one of his attorneys. By stipulation in open Court it was agreed between the parties that the defendant would not contest the allegations of the plaintiff as to the incompatibility of the parties but that evidence would be given by both parties concerning the property belonging to the parties. Thereupon evidence was introduced on behalf of the plaintiff concerning the cause for divorce and evidence was introduced on behalf of both parties concerning the property belonging to the parties. Thereafter the Court appointed a Master to determine the value of the property belonging to the parties and the Court having heard the evidence in this matter and having considered the report of the Master appointed by the Court and being fully advised in the premises.

Now therefore on motion of Davis, Renfrew &

Hughes, attorneys for the plaintiff, and the Court having heretofore and on the 8th day of October, 1954, rendered its opinion in this matter now finds the facts in this matter to be as follows:

### Findings of Fact

#### I.

That the plaintiff is now and for more than two years immediately preceding the commencement of this action has been a bona fide resident and inhabitant of the Territory of Alaska and now resides at Anchorage in the Territory of Alaska.

#### II.

That plaintiff and defendant intermarried at Wasilla in the Territory of Alaska on the 14th day of January, 1938, and ever since that date have been and now are wife and husband respectively.

#### III.

That no children have been born the issue of the marriage of the plaintiff and defendant but that the parties have raised the daughters of the plaintiff by a former marriage, namely, Jacquelyn Paddock and Arlene Paddock, now both over the age of 18 years.

#### IV.

That there is an incompatibility of temperament existing between the plaintiff and defendant which has existed for a considerable period of time and that such incompatibility has resulted in almost



continual bickering and quarreling between the parties and that it has become impossible for such parties to continue their marital relationship and that as a result thereof the plaintiff and defendant separated during the month of October, 1952, and have not since lived or cohabited together as wife and husband. That such incompatibility is such as to make it impossible for the parties to live together amicably as wife and husband and that there is no reasonable possibility of any reconciliation between the parties and that under the circumstances there is no reason for attempting to continue the marital relationship between the parties.

#### V.

That prior to the marriage of the parties, the defendant Harold D. Paddock was operating a certain business and had an investment at that time in such business in the amount of \$10,000.00.

#### VI.

That since the marriage of the parties the parties have both used their best efforts in operating and furthering the interests of the business known as Paddock's Paint Store operated by the defendant prior to the marriage of the parties and that such parties later opened a business known as Paddock's Furniture and Paint Store and that both of such parties worked in that business until the month of April, 1953, at which time the incompatibility of the parties was such that they could not both work in connection with the business and at that time the

plaintiff, at the request of the defendant, left such business.

## VII.

That since their marriage plaintiff and defendant have acquired certain real and personal property as follows:

1. Lot 2 and the East one foot of Lot 3 in Block 39 of the Original Townsite of Anchorage, Alaska, together with a building thereon in which is conducted the business known as Paddock's Paint and Furniture Store.

2. The East 25 feet of Lot 9 of Block 29 of the Original Townsite of the City of Anchorage, Alaska, together with the buildings located thereon.

3. The West half of Lot 10 of Block 29 of the Original Townsite of the City of Anchorage, Alaska, together with part of a building thereon.

4. Lot No. 3 of Block No. 108 of the Original Townsite of Anchorage, Alaska, being the family residence together with the furniture and fixtures therein contained and thereunto appertaining.

5. A house and lot located at 234 East 7th Avenue, adjacent to the family home of the parties, being purchased under contract.

6. A certain small tract located at Anchor River, Alaska.

7. Certain real estate located in Mountain View, Alaska.

8. The business known as Paddock's Paint and Furniture Store at Anchorage, Alaska, including the merchandise inventory thereof and including

certain property being purchased in Spenard, Alaska, through the business.

### VIII.

That in determining the value of the business known as Paddock's Paint and Furniture Store and the building in which such business is conducted, each of the parties should appoint one appraiser and those two appraisers to appoint a third appraiser and the decision of such appraisers when arrived at should be final as to the value of such business and property. In arriving at the value of the business and the business building above mentioned the appraisers should deduct the sum of \$30,000.00 from such value representing the value of the family home and the furnishings therein to be awarded to the plaintiff as hereinafter set forth in the amount of \$20,000.00 plus the sum of \$10,000.00 being the value of the interest of the defendant Harold D. Paddock in the business at the time of the marriage of the parties. Upon such deduction being made the remaining value of the business known as Paddock's Paint and Furniture Store and the building in which such business is conducted should belong equally to the plaintiff and to the defendant but the defendant should purchase the interest of the plaintiff therein at the value set as being the value of the plaintiff therein.

### Conclusions of Law

From the foregoing, its findings of fact, the Court concludes the law in this matter to be as follows:

## I.

Plaintiff in this action, Florence Paddock, is entitled to a decree of this Court dissolving absolutely the bonds of matrimony heretofore and now existing between plaintiff and defendant.

## II.

Plaintiff is entitled to receive the family home, together with the furniture and fixtures therein contained and thereunto appertaining at and for a price of \$20,000.00 to be deducted from the value of the business known as Paddock's Paint and Furniture Store and the building in which such business is conducted.

## III.

Defendant is entitled to a credit of \$10,000.00 on account of moneys he had invested in the business known as Paddock's Paint Store prior to the marriage of the parties and such \$10,000.00 shall be taken into consideration prior to the division of the value of such business and the building in which the business is conducted as hereinafter more fully set forth.

## IV.

The business known as Paddock's Paint and Furniture Store, together with the building in which such business is operated known as Lot 2 and the East one foot of Lot 3 in Block 39 of the Original Townsite of Anchorage, Alaska, shall be appraised by three appraisers one of whom is to be appointed by the plaintiff, one by the defendant and the third



jointly by such two appraisers. Decision of such appraisers as to the value of such property is to be final. In arriving at the interests of the respective parties in such business and property the appraisers are to take into consideration operating costs, taxes and all other costs to and including December 31, 1953. In arriving at such values the appraisers likewise are to figure that each of the parties, the plaintiff and the defendant, are entitled to a monthly wage of \$700.00 for the entire year of 1953 and such parties are to be debited or credited as the case may be depending on whether such parties have or have not drawn an aggregate of \$8400.00 each for that year as wages. After determining the various interests of the parties as herein set forth then the defendant is to pay to the plaintiff the value of her interest in and to such business property and one-fifth of the purchase price thereof is to be paid to the plaintiff on or before December 8, 1954 with the balance to be paid on a contract of sale basis in 48 equal monthly installments with interest to be paid by the defendant to the plaintiff on the actual unpaid balance due from time to time at the rate of 6% per annum from the 8th day of December, 1954 until paid. If any property belonging to the parties has been disposed of by either of the parties since the 1st day of January, 1954 such property and the value thereof is to be considered by the appraisers in determining the interests of the respective parties in and to the property and business known as Paddock's Paint and Furniture Store and the building in which such business is conducted.

## V.

Plaintiff and defendant are each entitled to an undivided one-half interest in and to all of the remaining real and personal property belonging to the parties except as to the property hereinabove described. Such parties, if able to agree may divide the respective properties between themselves in order to arrive at a fair division of such property. If the parties are unable to agree upon such fair division then the Court will order a division of the property or a sale of the property and a division of the proceeds as may seem most desirable for the interests of both parties.

## VI.

Defendant Harold D. Paddock is hereby ordered to pay forthwith to the plaintiff support money in the sum of \$500.00 per month from January 1, 1954 to and including October 31, 1954.

## VII.

Plaintiff is not entitled to any alimony in this matter.

## VIII.

Plaintiff is entitled to her costs and disbursements in this action to be paid by the defendant and such costs and disbursements shall include the sum of \$475.00 toward plaintiff's attorney's fee.

Let Judgment and Decree be entered accordingly.

Done in Open Court at Anchorage, Third Judicial

/s/ J. L. McCARREY, JR.,  
District Judge

/s/ BAILEY E. BELL,  
Attorney for Defendant

[Endorsed]: Filed December 22, 1954.

No. A-8926

VS.

## DECREE

The above entitled cause came on regularly for hearing at the court room of the above entitled Court at Anchorage, Alaska on the 22nd day of December, 1953, before the Honorable J. L. McCarrey, Jr., District Judge, sitting as a Court of equity and without the aid of a jury. The plaintiff Florence Paddock was personally present in Court together with Edward V. Davis, one of her attor-

neys. The defendant Harold D. Paddock was likewise personally present in Court together with Wendell P. Kay, one of his attorneys. By stipulation in open Court it was agreed between the parties that the defendant would not contest the allegations of the plaintiff as to the incompatibility of the parties but that evidence would be given by both parties concerning the property belonging to the parties. Thereupon evidence was introduced on behalf of the plaintiff concerning the cause for divorce and evidence was introduced on behalf of both parties concerning the property belonging to the parties. Thereafter the Court appointed a Master to determine the value of the property belonging to the parties and the Court having heard the evidence in this matter and having considered the report of the Master appointed by the Court and being fully advised in the premises,

Now, Therefore, on motion of Davis, Renfrew & Hughes, attorneys for the plaintiffs, and the Court having heretofore rendered its Findings of Fact and Conclusions of Law in the matter, and being fully advised in the premises, it is hereby ordered, adjudged and decreed as follows:

1. The bonds of matrimony heretofore and now existing between the plaintiff and defendant in this matter are herewith dissolved and made of no further effect.

2. The defendant forthwith shall pay to the plaintiff support money for that portion of the year 1954 ending on the 31st day of October, 1954, at the



rate of \$500.00 per month, amounting to the sum of \$5,000.00, together with plaintiff's costs and disbursements in this action incurred, including the sum of \$475.00 towards plaintiff's attorney's fees.

3. As set forth in the Findings of Fact and Conclusions of Law the Court in this matter, plaintiff is to select one appraiser, defendant is to select one appraiser, and each of such appraiser is to select a third appraiser to determine the value of the business known as the Paddock's Paint and Furniture Store, including the value of the building which such business heretofore has been and is now being conducted. Upon determination of such value by the appraisers, a credit is to be allowed to the defendant in the amount of \$30,000.00 of such value, represented by the value of the family home and the furnishings therein contained which are herein decreed to the plaintiff, and representing the sum of \$10,000.00 invested by the defendant in the business known as Paddock's Paint Store prior to the marriage of the parties. Upon determining such value and applying the credit given as herein set forth, the resulting value of the business and the building and property in which such business is being conducted is to be divided equally between the parties, subject to adjustments according to the drawings of the parties in the year 1953. In determining the adjustment, each of the parties shall be entitled to the sum of \$8,400.00 as salaries for the year 1953 and the drawings of the parties are to be considered as being any drawing in excess of such sum of \$8,400.00 for that year. Upon such computation,

credit shall be given or deductions made as against the respective parties depending on the drawings made by the respective parties during the year 1953. Upon such computation it shall be determined as to the interest of the plaintiff in such business and the business property known as Lot 2 and the East one foot of Lot 3 in Block 39 of the Original Townsite of Anchorage, Alaska. Defendant is to purchase the interest of the plaintiff in and to such business and such property according to the computations and adjustments herein mentioned. The defendant forthwith shall pay to the plaintiff one-fifth of the price so determined as being the value of the plaintiff's interest in such business and property, and the balance of such sum is to be paid by the defendant to the plaintiff in forty-eight equal monthly installments commencing on the 8th day of January, 1955 and continuing monthly thereafter until such interest shall have been fully paid. The defendant is to pay to the plaintiff interest on the actual unpaid balance owing by the defendant to the plaintiff from time to time at the rate of 6% per annum, figured from the 8th day of December of 1954. The parties in order to carry out this provision of the settlement between the parties are to execute a contract of sale of the business known as Paddock's Paint and Furniture Store and of the real property above described, and the plaintiff shall execute and place in escrow a good and sufficient deed transferring to the defendant all of her right, title and interest in and to such business and property, with instructions to the escrow holder to deliver such deed, bill



of sale and other documents as may be required to the defendant upon full payment having been made by the defendant for such property.

4. Except as to the business and the property hereinabove described and except as to the family home which is given to the plaintiff at the price of \$20,000.00 as above mentioned, all of the other property, both real and personal, belonging to the parties is to be divided equally between the parties. If the parties are unable to agree upon an equitable division of such property, the Court upon application of either party will enter a further decree dividing such property between the parties.

5. The Plaintiff shall be entitled to receive the family home of the parties and described as Lot 3 of Block 108 of the Original Townsite of Anchorage, Alaska, together with the furniture, fixtures, equipment and supplies therein contained and thereunto appertaining as her own sole and separate property and free and clear of any claim of the defendant therein or thereto. Defendant is hereby ordered to execute a good and sufficient deed conveying all of his right, title and interest in and to such property to the plaintiff and is ordered forthwith to deliver such deed to the plaintiff.

6. Each of the parties to this action is hereby ordered to execute such deeds, bills of sale and other documents as may be necessary or desirable to carry out the provisions of this decree.

Done in open Court at Anchorage, Third Judicial

Division, Territory of Alaska, this 22nd day of December, 1954.

/s/ J. L. McCARREY, JR.,  
District Judge

But object to any Decree at this time.

/s/ BAILEY E. BELL,  
Attorney for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed and Entered December 22, 1954.

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[Title of District Court and Cause.]

### MOTION FOR NEW TRIAL

Comes now the above named Defendant, and moves this Honorable Court to grant a new trial in the above entitled equity action, and for grounds of said motion states:

#### I.

The opinion of the Court, the Findings of Fact and Conclusions of Law, and the Decree were signed prior to the Defendant having rested his case, all as called to the Court's attention in the motion to re-open the case and to set aside all previous orders made, which was filed in January of 1954.

#### II.

To set aside all opinions, Findings of Fact and

Conclusions of Law and Decree, for the reason that the same are inequitable and unjust, unreasonable and oppressive as against the Defendant, Harold D. Paddock; as the said opinions, Findings of Fact and Conclusions of Law and Decree are based upon a theory of partnership in the business known as Paddock's Paint and Furniture Store, when in truth and in fact, there was no partnership; that the property belonged to the said Harold D. Paddock before he married the Plaintiff and continued to belong to him at all times, and that the oral finding of the Court that there was a partnership between the parties is supported by no evidence; is against the clear weight of the evidence, and is against the law of the Territory of Alaska.

### III.

That the first memorandum of opinion, filed on October 8, 1954, is contrary to the Findings of Fact and Conclusions of Law and therefore must have been signed and filed by inadvertance and mistake. The part of the opinion on page two wherein the Court found that both Plaintiff and Defendant devoted their full time in the development of the business is not substantiated by any evidence, is contrary to the great weight of the evidence, and the further finding that each party is entitled to one-half of the real and personal property they acquired since marriage is contrary to law, contrary to the evidence, and contrary to the great weight of the evidence. The next paragraph, in which the Court makes this statement: "I find that the Defendant

had an investment in the business of \$10,000.00 prior to the time Plaintiff married the Defendant", when the undisputed evidence showing a greater amount that \$10,000.00 was established, is in error. This finding should have been to the effect that the Defendant owned Lot 2 and the East one foot of Lot 3 in Block 39 of the Original Townsite of Anchorage, Alaska, and also owned the property across the street therefrom known as the Sunshine Market, prior to his marriage to the Plaintiff, and those properties should have been given to the Defendant free and clear of any claim of the Plaintiff. The Court, by its opinion filed on October 8, 1954, further made a finding giving the Plaintiff \$700.00 monthly salary for the entire year of 1953, when the evidence shows she did not work in the business during that period of time.

#### IV.

By said opinion, the Court ordered three appraisers to be chosen, one to be appointed by the Plaintiff, one by the Defendant, and the two in turn to appoint a third, and the decision reached by any two of the three appraisers would be final, and made certain requirements in said finding in the balance of said Paragraph which had not been met at the time of the signing of the purported Findings of Fact and Conclusions of Law and Decree, which documents were signed over the objections of the Defendant. The Court erred in making the last finding, which reads as follows: "I find that the Plaintiff is entitled to receive from the Defendant



\$500.00 per month for temporary support from January 1954 until October 31, 1954", this being inequitable and unfair due to the other findings in the opinion.

## V.

That the fifth paragraph of the Findings of Fact is contrary to the law and contrary to the facts; that all evidence showed that the Defendant, Harold D. Paddock, owned certain property prior to the marriage which far exceeds the amount found as to the investment of the said Harold D. Paddock. In paragraph VI should be set aside for the reason it is contrary to the evidence, that there was no substantial evidence at all that the Plaintiff worked in the business until the month of April, 1953; that paragraph VII should be deleted and stricken from the Findings of Fact for the reason that there is no evidence anywhere that the Plaintiff had anything to do with acquiring the real estate set forth in this finding, save and except the house and lot located at 234 East Seventh Avenue, adjacent to the family home of the parties; that the evidence shows that all and the rest of said property was acquired without any effort on the part of the Plaintiff. That the Conclusion of Law number III is erroneous and does not follow the evidence in the case and should be a finding of certain property owned by the Defendant prior to his marriage to the Plaintiff, and should find a greater amount than \$10,000.00 as the value of his investment in the business known as Paddock's Paint and Furniture Store prior to the marriage of the parties. That the portion of Con-

clusion of Law number IV granting the Plaintiff \$700.00 per month wages for the entire year of 1953 is completely against the evidence in the case showing that she had nothing whatsoever to do with the business and paid no attention to and spent no time in helping therein after the 1st of April, 1953.

## VI.

Paragraph V of the Conclusions of Law should be set aside, vacated and deleted from the Conclusions of Law for the reason that it is contrary to the laws of the Territory of Alaska, and contrary to all of the evidence in this case. That Paragraph VI of the Conclusions of Law should be deleted for the reason there is no law justifying or facts justifying the order made therein, that is, the Defendant pay to the Plaintiff \$500.00 per month, commencing January 1, 1954, and including October 31, 1954, in view of the Decree rendered herein. To delete and set aside from the Decree signed herein on the 22nd day of December, 1954, the following: Paragraph II thereof in its entirety, save and except the attorney's fees of \$475.00 for the Plaintiff's attorneys, and upon the deletion of the remainder of Paragraph II the Defendant tenders \$475.00 to the Plaintiff's attorneys. That Paragraph III of the Decree be deleted, as it is not supported by the evidence, is contrary to the evidence, and is contrary to law and should be reduced to a reasonable and equitable requirement if permitted to stand at all.

Wherefore, the Defendant moves this Honorable



Court to correct the opinion, the Findings of Fact and Conclusions of Law, and the Decree, and also to grant a new trial so that the Defendant may be permitted to finish the trial of his case and to produce the necessary evidence to bring the true facts before the Court, and for such other and further relief as the Court deems just and equitable in the premises, and for general relief.

BELL & SANDERS,  
/s/ By BAILEY E. BELL,  
Attorney for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed January 3, 1955.

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[Title of District Court and Cause.]

Paddocks Paint and Furniture Store  
Anchorage, Alaska

BALANCE SHEET  
December 31, 1953

[Jones & Anderson Letterhead]

February 14, 1955

The Honorable Judge for the District Court  
Third Division, Territory of Alaska  
Anchorage, Alaska

Sir:

In accordance with your instructions and the findings as set out in the Decree under date of Decem-

ber 22, 1954 in the matter of Florence Paddock, Plaintiff, vs. Harold Paddock, Defendant, the undersigned, together with Mr. William Odom, Public Accountant of Anchorage, Alaska, and Mr. William Renfro of the First National Bank of Anchorage, Alaska, have appraised that business known as Paddocks Paint and Furniture Store, Anchorage, Alaska, and present herewith as Exhibit "A" a Balance Sheet as of December 31, 1953 on Appraisal Basis showing the net interest of each party to be as follows:

Harold Paddock .....	\$67,069.74
Florence Paddock .....	22,194.95

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A total net worth of.....\$89,264.69

In arriving at this total net worth, certain factors were of necessity assumed. First, audit procedures usually followed were not feasible due to the passage of time. For example, it was not possible to determine the amount of Cash on Hand except by inspection of Bank statements and by verifying that sales for the last few days of 1953 were treated as deposits in transit at December 31, 1953.

Accounts Receivable, \$17,909.09, represents Accounts Receivable as 'good and collectible'. In other words, possible bad accounts had already been deducted from the receivables as shown at December 31, 1953. There is nothing available to us to indicate which of the accounts treated as 'bad', later were collected.

The inventory of merchandise is the figure used

in filing joint income tax returns and therefore may be assumed to represent mutual agreement by the parties.

The item "Income Tax Refund Receivable", \$2,022.04, was received subsequent to December 31, 1953 for the year 1953 and accordingly must be assumed to have been a receivable at that date.

The Fixed Assets of Furniture, Fixtures, Trucks, and Equipment represent values mutually agreed upon by the undersigned and Mr. Odom. We were, however, unable to mutually agree upon the value of the Real Estate described and accordingly called in Mr. Renfro and a fair value of \$55,000.00 was accepted by all concerned.

Other Assets and Prepaid Expenses are as reflected in the books of the business and again were not subject to verification due to the passage of time.

The Current Liabilities are as reflected by the books of the company. The only item which could be verified was "Notes Payable", \$27,000.00.

The Capital Accounts as shown reflects the distribution of the worth of the business in accordance with your instructions, giving credit to Mr. Paddock of \$30,000.00 for an original \$10,000.00 investment prior to marriage, and for \$20,000.00 to offset the withdrawal by Mrs. Paddock of the family home.

The item of \$30,000.00 to Mr. Paddock resulted in considerable discussion between Mr. Odom and the undersigned due to the instructions of the Court that "the appraisers are hereby instructed to first deduct from Plaintiffs interest in and to said busi-

ness, the sum of \$30,000.00 which is found \* \* \*".

That instruction was interpreted by Mr. Odom to mean that after Mrs. Paddock's interest had been determined, an additional \$30,000.00 would be deducted from that interest and credited to Mr. Paddock.

As opposed to that Interpretation, the undersigned quotes item 3 of the Decree, "upon determination of such value by the appraisers, a credit is to be allowed to the defendant in the amount of \$30,000.00 of such value, represented by the value of the family home \* \* \*, and representing the sum of \$10,000.00 invested by the defendant \* \* \* prior to marriage".

The undersigned interprets the Decree to mean that \$30,000.00 of the value of the business is to be credited to Mr. Paddock and not \$30,000.00 of Mrs. Paddock's interest in the business. In support of that contention, we submit that the value of a business as defined by accounting is "the Assets minus the Liabilities", in this case Assets \$137,156.24 minus the Liabilities" of \$47,891.55 or \$89,264.69. By the Decree, the value is to be split by "first crediting Mr. Paddock with \$30,000.00, crediting each party with \$8,400.00 as salary and charging each party with their respective drawings: upon determining such value—the resulting value is to be divided equally". The results of this interpretation are as shown on the attached Exhibit "A".

No value has been placed upon the business for "Goodwill or Enterprise Valuation" as it appears from the income tax returns that the net earnings

of the company do not warrant such a valuation. Further, no value has been placed on other properties owned by the parties. Such properties include that location known as the "Sunshine Market" property and the "Spenard Warehouse". No valuation has been placed thereon as item 4 of the Decree sets out the procedure for establishing those values.

It is the opinion of the undersigned, subject to the above comments, that Exhibit "A" attached fairly presents the interest of the parties in accordance with the Decree and the instructions of the Court.

In the absence of specific instructions, this report is being delivered one copy to the Attorney for the Defendant, Mr. Bailey Bell; one copy to the Attorney for the Plaintiff, Mr. E. V. Davis; and one copy to the Court.

Respectfully submitted,

JONES & ANDERSON,  
/s/ GEORGE R. JONES

### EXHIBIT "A"

#### PADDOCKS PAINT AND FURNITURE STORE

Anchorage, Alaska

#### BALANCE SHEET AS OF DECEMBER 31, 1953 ON APPRAISAL BASIS

##### ASSETS

##### Current Assets:

Cash on Hand and in Banks.....	\$ 5,140.04
Accounts Receivable .....	17,909.09
Inventory, Merchandise .....	48,625.13
Income Tax Refund Receivable.....	2,022.04

Total Current Assets.....	<hr/>	\$ 73,696.30
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## Fixed Assets: (As Appraised)

Furniture, Fixtures, Trucks, Equipment \$ 6,737.48

Real Estate, Lot 2 and E. 1 Ft. Lot 3,

Bl. 39, and Buildings ..... 55,000.00

Total Fixed Assets .....	61,737.48
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## Other Assets and Prepaid Expenses:

Prepaid Deposits .....\$ 110.00

Prepaid and Unexpired Insurance..... 1,612.46

Total Other Assets and Prepaid Expenses	1,722.46
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Total Assets .....	\$137,156.24
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## LIABILITIES

## Current Liabilities:

Accounts Payable .....\$ 14,437.14

Payroll and Withholding Taxes..... 1,349.15

Accrued Expenses ..... 5,105.26

Notes Payable ..... 27,000.00

Total Current Liabilities .....	\$ 47,891.55
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Capital:	Harold Paddock	Florence Paddock	Total
Charges against Capital:			
Drawing Account	\$ 1,645.47	\$16,520.27	\$ 18,165.74
Credits to Capital:			
For House	\$30,000.00		\$ 30,000.00
Salary	8,400.00	\$ 8,400.00	16,800.00
One half of remain- ing Capital	30,315.21	30,315.22	60,630.43
Total Credits	\$68,715.21	\$38,715.22	\$107,430.43
Balance	\$67,069.74	\$22,194.95	89,264.69
Total Liabilities and Capital.....			\$137,156.24

[Endorsed]: Filed February 18, 1955.



[Title of District Court and Cause.]

## REPORT TO COURT OF AUDIT

To: The Honorable J. L. McCarrey, Jr., District Judge, Third Judicial Division, Territory of Alaska:

In compliance with your instructions and the typewritten Opinion and the Findings of Fact and Conclusions of Law in the matter of Florence Paddock, Plaintiff, vs. Harold D. Paddock, Defendant, the undersigned, together with George R. Jones, endeavored to carry out an appraisal to determine the separate interests of the Plaintiff and the Defendant in the business known as Paddock's Paint and Furniture Store, in Anchorage, Alaska, and presents herewith a balance sheet based upon the Memorandum Opinion issued by the Honorable J. L. McCarrey, Jr., District Judge, on the 8th day of October, 1954.

The value of a business being the assets minus the liabilities, in this case \$137,156.24 minus \$49,765.20, then the value of the business known as Paddock's Paint and Furniture Store is \$87,391.04, which value is divided in accordance with the Memorandum Opinion as follows:

Florence Paddock .....	\$36,258.37
Harold D. Paddock .....	51,132.67

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\$87,391.04

Then, further in accordance with Paragraph 2,

Page 3 of the Memorandum Opinion \$30,000.00 was to be deducted from Mrs. Paddock's interest in the business, leaving Mr. Paddock owing Mrs. Paddock \$6,258.37 as her interest in the business which he was to purchase.

In calculating the interest of each of the parties under the Memorandum Opinion, I arrived at the facts as follows, to-wit:

### PADDOCK'S PAINT AND FURNITURE STORE

Balance Sheet as of December 31st, 1953

On Appraisal Basis

#### ASSETS

##### Current Assets:

Cash on Hand and in Banks.....	\$ 5,140.04
Accounts Receivable .....	17,909.09
Inventory, Merchandise .....	48,625.13
Income Tax Refund Receivable.....	2,022.04

Total Current Assets.....	\$ 73,696.30
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##### Fixed Assets: (As Appraised)

Furniture, Fixtures, Trucks, Equipment \$	6,737.48
Real Estate, Lot 2 and E. 1 Ft. Lot 3, Bl. 39, and Buildings .....	55,000.00

Total Fixed Assets .....	61,737.48
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##### Other Assets and Prepaid Expenses:

Prepaid Deposits .....	\$ 110.00
Prepaid Insurance .....	1,612.46

Total Other Assets and Prepaid Expenses	1,722.46
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Total Assets .....	\$137,156.24
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LIABILITIES

Current Liabilities:

Accounts Payable .....	\$ 14,437.14
Payroll and Withholding Taxes.....	1,349.15
Accrued Expenses .....	5,105.26
1953 Income Tax Payable.....	1,873.65
Notes Payable .....	27,000.00

Total Current Liabilities .....	\$ 49,765.20
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Capital:	Harold Paddock	Florence Paddock	Total
	<hr/>	<hr/>	<hr/>

Charges against Capital:

Drawing Account	\$ 1,645.97	\$16,520.27	\$ 18,166.24
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Credits to Capital:

For wages allowed	8,400.00	8,400.00	16,800.00
Half of remain- ing capital	44,378.64	44,378.64	88,751.28

Total Credits	52,778.64	52,778.64	105,557.28
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Balance	51,132.67	36,258.37	87,391.04
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Total Liabilities and Capital .....	\$137,156.24
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Then I worked with Mr. Jones on the Decree dated December 22nd, 1954, signed by the Honorable J. L. McCarrey, Jr., District Judge, and following that Decree, I arrived at the following figures, to-wit:

Capital:	Harold Paddock	Florence Paddock	Total
	<hr/>	<hr/>	<hr/>

Charges against Capital:

Drawing Account	\$ 1,645.97	\$16,520.27	\$ 18,166.24
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Credits to Capital:

For wages allowed	8,400.00	8,400.00	16,800.00
For House	30,000.00		30,000.00

Half of remain- ing capital	29,378.64	29,378.64	58,757.28
Total Credits	67,778.64	37,778.64	105,557.28
Balance	66,132.67	21,258.37	87,391.04
			<u>\$137,156.24</u>

You will notice that the Decree does not follow the Memorandum Opinion and consequently a different figure has been arrived at by reason thereof.

Following the Memorandum Opinion, you will note that Mrs. Paddock has \$6,258.37 remaining as her interest in the business after the sum of \$30,000.00 has been deducted from her interest in accordance with Paragraph 2, Page 3 of the Memorandum Opinion.

Following the Decree, Mrs. Paddock would have \$21,258.37 due her.

Therefore, a difference exists between the Memorandum Opinion and the Decree as filed, and the interpretation thereof by Mr. Jones, of \$15,000.00.

I have submitted the two sets of figures because I felt that it was more fair to the Court and to all parties concerned.

I have carefully analyzed Mr. Jones' figures in the Balance Sheet of December 31st, 1953, filed with the Court, and I find that Mr. Jones has listed as an Asset, "Income Tax Refund Receivable" in the amount of \$2,022.04. However, Mr. Jones failed to deduct as a Liability the accrued indebtedness of income tax in the sum of \$1,873.65, which had to be

paid before the refund could be collected. Therefore, Mr. Jones' figure of \$89,264.69 is incorrect to the extent of \$1,873.65, making the actual value of the assets, over and above the liabilities, \$87,391.04 instead of \$89,264.69. This, of course, is merely an error in figures, but it clearly effects the resulting calculated interest of each of the parties to that extent.

It is also to be considered by the Court that Mrs. Paddock has received in the year 1954, \$1,856.49, and that various bills have been paid and are still being paid for her in 1955, which drawings of course are not included in the above figures.

Respectfully submitted,

/s/ W. P. ODOM

Acknowledgment of Service attached.

[Endorsed]: Filed February 21, 1955.

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[Title of District Court and Cause.]

## EXPLANATION OF REPORT OF AUDITOR

To: The Honorable J. L. McCarrey, Jr., District Judge, Third Judicial Division, Territory of Alaska.

As per understanding in Court at the time Mr. Jones, auditor appearing on behalf of Mrs. Paddock, filed an explanation of his figures, Mr. Odom, not having the time to prepare his figures, did make a rough draft in just a few moments, and



now we wish to substitute this more complete report for the pencilled figures handed in at that time and ask this Honorable Court to take into consideration in arriving at his judgment in this case said report.

Dated at Anchorage, Alaska, this 5th day of March 1955.

BELL & SANDERS,  
/s/ By BAILEY E. BELL,  
Attorneys for Defendant

Mr. Bailey Bell, Attorney-at-Law      March 3, 1955  
Anchorage, Alaska

Dear Sir:

Investigation discloses that the amount of \$1,873.65 which was listed as a liability in the figures which I formerly presented to you pertaining to Paddock's Paint & Furniture Store should not have been listed as a liability as this amount was already accounted for in the calculations.

Therefore I have revised my figures and in accordance with what I think is the intent of the court and in agreement with the memorandum opinion of said court dated October 8, 1954 wish to present the following:

The value of the business known as Paddock's Paint & Furniture would be the Assets of the Business minus the Liabilities which would give the value of the business, in this case:

Assets: \$137,156.24

Liabilities: \$47,891.55

Value of Business: \$89,264.69

Now after taking into effect the drawings and



the wages as instructed to by the memorandum opinion, the respective interests of each party in the above business would be:

Mrs. Paddock: \$37,195.20

Mr. Paddock: \$52,069.49

Total: \$89,264.69 (This total is value of the Business above.)

It is my understanding that if the division of the Business were to be made at this point, then Mr. Paddock would buy from Mrs. Paddock her share of the business which is as above, \$37,195.20, but according to memorandum opinion and also the verbal instructions of Judge McCarrey it was intended that Mr. Paddock should be given \$10,000.00 for his interest in the business prior to his marriage, and that he should also be given \$20,000.00 for the equivalent value of the home which Mrs. Paddock is retaining.

Therefore, if Mr. Paddock were going to buy Mrs. Paddock out of the business, but is to be allowed \$30,000.00 for the foregoing, the figures would then appear to be as follows:

Mrs. Paddock's value in the business: \$37,195.20.

Less the \$30,000.00 above: \$30,000.00.

Balance due Mrs. Paddock: \$7,195.20.

The above is based on the understood intent of the court to determine the interest of each party in the business and to then equalize the distribution of any monies due Mrs. Paddock by giving Mr. Paddock \$30,000.00 for his pre-marriage interest in the business and also for the house valued at \$20,000.00.

All of the foregoing figures are substantiated by

calculations on work sheets which I am retaining and would be willing to submit for further clarification.

The figure of \$7,195.20, as I understand it, would be subject to any drawing made by Mrs. Paddock in 1954 and 1955.

Respectfully submitted,

/s/ W. P. ODOM,

Box 1594, Anchorage, Alaska

Acknowledgment of Service attached.

[Endorsed]: Filed March 5, 1955.

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[Title of District Court and Cause.]

#### M. O. RENDERING ORAL DECISION

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, Hearing in re. accounting having heretofore and on the 2nd day of March, 1955, been had in cause No. A-8926, entitled Florence Paddock, plaintiff, versus Harold D. Paddock, defendant and the Court having reserved its decision,

Whereupon the Court now renders oral decision and finds that the accounting submitted to the Court by George R. Jones is the Accounting by which this case is to be governed by and directs counsel for plaintiff to prepare Amended Findings of Fact and Conclusions of Law and Decree.

Entered Journal March 11, 1955.

[Title of District Court and Cause.]

## M. O. DENYING MOTION FOR NEW TRIAL

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time motion heretofore made by Bailey E. Bell, of counsel for defendant, in cause No. A-8926, entitled Florence Paddock plaintiff versus Harold D. Paddock.

Whereupon Court denied motion and in any event of appeal supersedeas Bond is set at \$20,000.00.

Entered Journal March 15, 1955.

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[Title of District Court and Cause.]

## TRANSCRIPT OF OPINION

On Friday, March 11, 1955, in open court at Anchorage, Alaska, the Honorable J. L. McCarrey, Jr., U. S. District Judge, rendered the following opinion:

The Court: The Court has a decision to render at this time. This will concern you, Mr. Davis. The Court will go back just a moment in the case of Paddock vs. Paddock, A-8926. This matter came to the Court's attention based upon a motion by the defendant, pointing out to the Court that the Court in its opinion—written opinion—had found one amount whereas in fact, the Findings of Fact and

Conclusions of Law and Decree had determined another amount and this was brought before this Court for a determination in trial on the 2nd day of March. At that time there were two accountants present in court—Mr. Odom and Mr. George R. Jones. From the evidence, it was difficult to arrive at a conclusion based upon the expert opinion of both Mr. Jones and Mr. Odom and therefore, at that time, the Court requested that Mr. Jones and Mr. Odom submit an additional accounting which was done. Now, the Court has gone over the additional accounting and has considered the entire case as a whole and finds that the accounting submitted by Mr. George R. Jones in plaintiff's Exhibit "Z" is the accounting as to which this case is to be governed by, that being the accounting carried out the intent of the Court, although not clearly set forth in the opinion from an accounting viewpoint and therefore, at this time, that is the opinion of the Court and the Court would ask Mr. Davis, attorney for the plaintiff, to prepare amended Findings of Fact and Conclusions of Law and Decree in conformance with that finding of the Court.

Mr. Davis: I presume that a short amendment of the particular paragraph will do, or do you want them all to be written?

The Court: No, just the paragraph in question, Counselor. I'd like to have you recite it, if you don't mind—the opinion and the paragraph in your findings and decree.

Mr. Davis: All right. Now, I wish the Reporter would make me a copy of the opinion just given so

that I can work from that and while we are talking about the matter, your Honor, I wonder—this motion, of course, is only part of another motion. Have you disposed of the entire motion?

The Court: No, in that respect, the Court then will continue this matter until Monday morning and render an opinion at that time. The court will stand adjourned until Monday morning at the hour of 9:30 o'clock a.m.

[Endorsed]: Filed March 26, 1955.

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[Title of District Court and Cause.]

### ORDER DENYING MOTION FOR NEW TRIAL

This matter came on regularly for hearing on the 11th day of February, 1955 and the 18th day of February, 1955, on defendant's motion for new trial and on the request of the Court for additional evidence concerning a claim by the defendant in the motion for new trial that the findings and conclusions and the decree entered by the Court on the 22 day of December, 1954 did not conform with the opinion of the Court dated October 8th, 1954, in certain respects as more fully set forth in the motion for new trial. The plaintiff was present by and through Edward V. Davis of her attorneys and the defendant was present by and through his attorney Bailey E. Bell. Defendant's motion for new trial was argued on behalf of the respective parties and



the Court heard additional evidence produced by both parties concerning the claimed conflict between the opinion and the findings of fact and conclusions of law and decree with reference to the deductions of the \$30,000.00 credit allowed to the defendant by reason of his original investment in the business and by reason of the family home being retained by the plaintiff. Thereupon the Court took the matter under advisement and on the 11th day of March, 1955 entered its oral opinion concerning the claimed conflict between the opinion and the findings of fact and conclusions of law and decree, and the Court in such opinion having found that the findings of fact and conclusions of law and the decree heretofore entered carried out the Court's intent in its opinion, dated October 8th, 1954, and that in so far as the findings of fact and conclusions of law and decree might differ from the Court's opinion that such findings of fact and conclusions of law and decree should govern, and the Court having directed the attorney for the plaintiff to prepare amended findings of fact and conclusions of law and decree in accordance with the findings of the Court, and it further appearing that the findings of fact and conclusions of law and decree of the Court heretofore entered on the 22nd day of December, 1954, actually set out the intent of the Court as to such matters and amended findings of fact and conclusions of law and amended decree in such respect would not change the findings and conclusions heretofore entered, and the Court being fully and duly advised in the premises:

Now Therefore, it is hereby ordered, adjudged and decreed as follows:

1. Defendant's motion for new trial in the above entitled action is hereby denied.

2. Findings of fact, conclusions of law and decree heretofore adopted and entered by this Court on the 22nd day of December, 1954, in the above entitled matter are hereby adopted and reaffirmed as being the findings of fact, conclusions of law and decree of the Court in the above entitled matter.

Done in Open Court at Anchorage, Alaska, Third Judicial Division, this 24th day of June, 1955.

/s/ J. L. McCARREY, JR.,  
District Judge

Acknowledgment of Service attached.

[Endorsed]: Filed and Entered June 24, 1955.

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[Title of District Court and Cause.]

### HEARING ON MOTION TO FIX BOND

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time Hearing on Motion to Fix Bond in cause No. A-8926, entitled Florence Paddock, plaintiff, versus Harold D. Paddock, defendant, came on regularly before the Court, plaintiff represented by Edward V. Davis, of counsel, defendant

represented by William H. Sanders, of counsel, the following proceedings were had, to-wit:

Argument to the Court was had by Edward V. Davis, for and in behalf of the plaintiff.

Argument to the Court was had by William H. Sanders, for and in behalf of the defendant.

Whereupon, the Court having heard the argument of respective counsel and being fully and duly advised in the premises, fixes Defendant's bond at \$25,000.00.

Entered Journal June 24, 1955.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To: Florence Paddock, Plaintiff above named, and  
to Honorable Edward V. Davis, her Attorney  
of record:

Notice Is Hereby Given, that the Defendant herein, Harold D. Paddock, hereby appeals to the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, from the Judgment rendered herein overruling the Defendant's Motion for a New Trial, which Judgment is dated the 24th day of June, 1955, and from the Judgment as attacked by the Motion for a New Trial, which Judgment is dated the 22nd day of December, 1954, and which Judgment is by reference made a part of this Notice of Appeal as fully as if set out herein;

and from all Orders and Judgments rendered in the above entitled cause.

Dated at Anchorage, Alaska, this 2nd day of July, 1955.

BELL, SANDERS & TALLMAN,

/s/ By BAILEY E. BELL,

Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed July 5, 1955.

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[Title of District Court and Cause.]

### AMENDED NOTICE OF APPEAL

To: Florence Paddock, Plaintiff above named; and  
to Honorable Edward V. Davis, her Attorney  
of Record:

Notice Is Hereby Given, that the Defendant herein, Harold D. Paddock, hereby appeals to the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, from the Judgment rendered herein overruling the Defendant's Motion for a New Trial, which Judgment is dated the 24th day of June, 1955, and from the Judgment as attacked by the Motion for a New Trial, which Judgment is dated the 22nd day of December, 1954, which Judgment granted the Plaintiff a divorce, \$5,000.00 support money, \$475.00 attorneys fees, \$8,400.00 as salary for the year of 1953, a division of the property, both real and per-



sonal, and gave to her certain property as her own, and which Judgment is by reference made a part of this Amended Notice of Appeal as fully as if set out herein in full; and from all Orders and Judgments rendered in the above entitled cause.

Dated at Anchorage, Alaska, this 13th day of July, 1955.

BELL, SANDERS & TALLMAN,

/s/ By BAILEY E. BELL,

Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed July 14, 1955.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Wm. A. Hilton, Clerk of the above entitled court, do hereby certify that pursuant to the provisions of Rule 10 (1) of the United States Court of Appeals, Ninth Circuit, of Rules 75 (g) (o) of the Federal Rules of Civil Procedure, and of the designation of counsel for defendant, I am transmitting herewith the Original Papers in my office dealing with the above entitled action or proceeding, including plaintiff's exhibits 1, 2, 3, 4 and Z, defendant's exhibit Y, together with the court reporter's transcript of testimony taken at the trial of said cause on December 22, 1953.

The papers herewith transmitted constitute the



record on appeal from the judgment filed and entered in the above entitled action by the above entitled court on December 22, 1954, to the United States Court of Appeals, Ninth Circuit, San Francisco, California.

Dated at Anchorage, Alaska, this 17th day of August, 1955.

[Seal]            /s/ WM. A. HILTON,  
                         Clerk

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In the District Court for the District of Alaska,  
Third Division

No. A-8926

FLORENCE PADDOCK,                                  Plaintiff,

vs.

HAROLD D. PADDOCK,                                  Defendant.

### TRANSCRIPT OF PROCEEDINGS

Before The Honorable J. L. McCarrey, Jr., U. S.  
District Judge.

Anchorage, Alaska, December 22, 1953; 10:00  
o'clock a.m.

Appearances: Edward V. Davis, Attorney for the  
plaintiff. Wendell P. Kay, Attorney for the de-  
fendant. [1\*]

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\* Page numbers appearing at top of page of original Reporter's  
Transcript of Record.

The Court: This was the time set in the matter of Florence Paddock, plaintiff, vs. Harold D. Paddock, defendant, A-8926. The Court has heretofore talked with counsel for the respective parties and while the Court is assuming the fact to be that the principal problem is one of property determination, and after having read the pleadings it appears that is the big problem. Now, owing to the fact there is so much work pending before the court and for the further reason that this appears to be somewhat of an accounting problem more than any other particular thing, the Court at this time, with consent of Counsel, is going to refer the disposition as to the accounting to a Master and the Court is advised that both counsel have agreed upon the present accountant, Harry Godechaux, is that correct?

Mr. Kay: Correct.

Mr. Davis: Correct.

The Court: Therefore, under Rule 53, Rules of Civil Procedure, this question of accounting will be referred to the Master, Mr. Harry Godechaux. It is understood that conformant to subparagraph A of Rule 53 that Mr. Godechaux will be paid out of the estate of the respective parties as the Court does not have any funds nor can he appropriate funds from Fund "C" in order to make this payment. The Court feels that it will be to the advantage of both parties to have such a person, and in this case Mr. Godechaux, since he is so well acquainted with the facts [3] thereunder. Now, the Court doesn't want to be bound entirely as to findings of the Master, but the principal purpose is to compile statistical

information necessary for the Court to make a determination from that. The Court desires further to have proof as to the acquisition of the property and the participation in the operation of the business, which is now conducted by the parties in order that the Court will be able to attempt to equitably make a determination of the rights of the respective parties hereto. Now, does either counsel have any question as to the preliminary statement?

Mr. Kay: No, Your Honor.

Mr. Davis: I might, if I may, make just a brief statement here as to what I think the issues are here.

The Court: The Court would like to have you both make an opening statement in due course, but the Court at this time is inquiring as to his understanding and purpose of the Master?

Mr. Davis: I think I understand.

The Court: Very well, if that is the case, Mr. Kay, you may make your opening statement. You are for the plaintiff?

Mr. Kay: No, Mr. Davis represents the plaintiff. We happen to be occupying different pews. I can't get Mr. Davis to yield to the plaintiff's table.

The Court: Maybe that is the lucky seat. Very well, Mr. Davis, you make make your opening statement.

Mr. Davis: If the court please and Mr. Kay. As the Court has indicated, the pleadings will show that the only serious dispute before the Court at this time is the settlement of property rights. Inasmuch as both of the parties claim incompatibility and

the parties have separated over a year ago, haven't lived together since as husband and wife, of course, each of the parties are claiming that the other one is the party at fault in connection with the incompatibility, but I intend in this matter to put on proof of a general nature which I believe will establish the incompatibility between the parties. As far as property rights are concerned here and for the Court's information, the parties I believe have honestly tried over a period of several months last past to reach an agreeable settlement, which they have come fairly close to on several occasions, but they haven't been able to reach a final settlement that they both agree on, and accordingly, it is going to be necessary for the Court here to determine what the property is, where it is and what is going going to be done with it. In that connection I want to call the Court's attention to the fact that a considerable portion of the property consists of a going business, something that probably cannot be divided without serious detriment to both parties. The problem is going to be that one or the other party get the business as such. The property also consists of several pieces of real property including some business property and the family home. I will show that back in the month of May I asked Mr. Gene Silberer, of Norene Realtors, to appraise the major portion of [5] the property and I don't believe that there is any serious dispute between the parties as to the value that Mr. Silberer has set on the various items of real property with the exception of the family home. Mrs. Paddock has accepted



the filing of Mr. Silberer as to the value of the home and Mr. Paddock has thought it was worth more than what Mr. Silberer said it was. I also have the Profit and Loss Statement and Balance Sheet of this business as of the end of December of last year, prepared by Mr. Godchaux the accountant, and I think that Mr. Godchaux is actually in better position here to determine what the interest of the parties is in that business than anybody else because he has been, for several years, keeping the books or checking income tax. I would like to point out to the Court, that under order of this Court, although the parties have conducted that business as a partnership for many many years last past that Mrs. Paddock has been excluded from even setting foot on the premises and that injunction by consent is still in full force and effect. We object to the temporary order that the court made. Because of the fact that there is so much animosity between the parties there wasn't any use in trying to aggravate it by having her go down there, but along with everything else now we are going to have to ask the Court for some money for Mrs. Paddock, both as a basis of money now and so much money a month until this matter is finally settled. Now, for what it may be worth, it is my suggestion that Mr. Godchaux not make any final determination as far as the business [6] is concerned until after the close of this here business. That is only ten days or some such matter away, but it seems to me that we are close enough to the end of the year so that we should reflect what the business is as of that



time. It also would be my suggestion that if the Court sees fit to grant a divorce here that we might as well go ahead and finish up that phase of it, as far as the divorce is concerned, and allow then the matter of property to be settled as soon as possible, as soon as Mr. Godechaux can make his report.

The Court: Very well, Mr. Kay.

Mr. Kay: May it please the Court and Mr. Davis. I agree very largely with the statement of issues and remarks made by Mr. Davis, however, there are several points of considerable difference between us. Mr. Davis has consistently taken the position, which he stated in his opening remarks, that this business has been conducted as a partnership for many years. We believe the evidence will show that the business has never been conducted as a partnership, has never been a partnership and is not now a partnership. I really have been at a loss, since I came into this case which was only a month or two ago, to figure out why Mr. Davis thinks this is a partnership. Now, this morning I am going to be educated on that because he has announced that he is going to prove that. We will show Your Honor that efforts have been made throughout the year to settle the case as of the close of business 1952 and that has been the chief point where [7] the parties have both drawn, whether or not to take into consideration in making the settlement the amount of money which Mrs. Paddock has drawn this year while they have been separated—an amount which we will show is in the vicinity of \$15,000 or \$16,000. We believe that, of

course, a fair settlement must be made of the property, but we do not agree that the business is or has been a partnership. We will show that the property has been and is now in Mr. Paddock's name. He owned the business when they were married and has continued it throughout as Paddock's Paint and Furniture Store. Mrs. Paddock came to work for him, as a matter of fact, as a young widow with two children back in 1936, somewhere along there, and after a year or so as an employee they were married and have lived together since. I believe with that statement we are ready to go.

The Court: Very well, the Court will inquire of counsel, in order to get at a basic starting point, do you, Mr. Kay, consider the appraisal of Mr. Gene Silberer, which was made last May, an appraisal that could be used at this time as to value?

Mr. Kay: Your Honor, except as what Mr. Davis stated—as to the house which we feel Mr. Silberer appraised too low. He appraised it at \$18,000 and Mr. Paddock feels it is actually worth in the neighborhood of \$25,000. We feel that Mr. Silberer's appraisal was correct as of last May. Now, I feel personally, and I don't have anything to back it up, but I feel there has been some decline in value in the Anchorage area during the year. [8]

The Court: Well, that is why the court raised the point.

Mr. Kay: But we are perfectly willing to accept those figures except as to the house, as a fair appraisal of the property made last May. I understand Mr. Silberer was going to be here, called as a

witness, so we would have an opportunity probably to ask him whether his opinion has changed since that time.

The Court: Now, I asked counsel to get Mr. Godchaux here this morning. Did counsel endeavor to do that?

Mr. Davis: I was not able personally to talk to him. I left word for him to call.

The Court: Here he is now.

Mr. Davis: I wonder at this time if we might agree on some exhibits here as a matter of getting the thing moving, to put in the Norene Appraisal and put in a list of the tax valuations of this property as of last year.

The Court: Mr. Kay.

Mr. Kay: No objection.

The Court: Seems like a good point to start from as far as the Court is concerned.

Mr. Davis: I would like to offer then at this time Plaintiff's proposed Exhibit No. 1, which is an appraisal made by Mr. Gene Silberer on May 9, 1953, which concerns the Paddock Paint Store property and Sunshine Market property and the home.

The Court: Very well, and it is understood that Mr. Kay [9] doesn't concur as to the appraisal of the home only.

Mr. Kay: That is right. I wonder if it wouldn't be a good idea to mark in the margin the name of the property concerned so the Court wouldn't have to figure out which is which.

Mr. Davis: Very well. This first piece here is Paddock's Paint Store property. Now, the second two together comprise the Sunshine Market property—the east half and the west half and the last one is the family home. Now, I would like to offer as Plaintiff's proposed Exhibit No. 2——

The Clerk: This is to be admitted? (Referring to Plaintiff's Exhibit No. 1.)

The Court: Yes, that is as qualified by attorney for the defendant.

(The document above referred to, was thereupon received in evidence as Plaintiff's Exhibit No. 1.)

Mr. Davis: Well, I presume the exhibit itself is qualified, but it is understood Mr. Kay does not agree on one piece of property.

The Court: That is right.

Mr. Davis: Proposed Exhibit No. 2 is a list of the tax valuations for the City Taxes.

The Court: What date is that?

Mr. Davis: As to the same pieces of property. That is for the year 1952-53, as of October '52. Now, since Mr. Godchaux has come in I wonder if it might not be wise for the [10] Court to go back and review a little bit what was done so he won't have to stay. I don't suppose there is any good reason why he should waste his morning here.

The Court: The Court was going to do that, but doesn't he need the exhibits for the accounting?

Mr. Davis: Well, I don't think so, unless—(Mr. Davis confers with Mr. Godchaux)—I would then



offer a proposed Exhibit No. 3. I think you have this one, Wendell, as to the financial statement of Paddock Paint and Furniture Store as of December 31, 1952, signed by Mr. Godchaux, which he says is a statement that he made.

The Court: Well, of course, that shows the valuation and Profit and Loss as of that time. Naturally, we expect him to bring it up current in addition thereto.

Mr. Kay: We have one as of the 30th day of November, 1953, of course, he will later, as Master, bring it completely up to date.

The Court: That is right. I think this would certainly be advantageous to the Court. So if there is no objection——

Mr. Kay: No objection.

The Court: Let the record show then that Exhibits 1, 2 and 3, as explained by counsel, and without objection, excepting to the one qualification of one, are admitted in evidence.

(The documents above referred to, was thereupon received in evidence as Plaintiff's Exhibits 2 and 3.) [11]

The Court: Mr. Godchaux, the Court will just advise you from the bench that upon stipulation of counsel for both the plaintiff and defendant they desire to have you appointed as Master in this case and the Court would like to have you, in this capacity, make a full accounting, and, Mr. Kay, you didn't object thereto so it will be as of 31 December 1953, is that correct?



Mr. Kay: Yes.

The Court: And after that has been done, which the Court hopes you can do at a fairly early date and submit the same to the Court. Now, in this respect the Court hasn't checked that—I wonder if Mr. Godchaux should not take an oath before he is an officer of the court in this respect and, therefore, it would appear to the court that the proper things to do and rather than to have it orally administered by the Clerk, the Court thinks now that it might be advisable to have it reduced to writing, there being no bond in this case because it is on stipulation of counsel. So, therefore, the court will prepare an oath for you to sign if you will come by sometime—are you willing to accept this responsibility?

Mr. Godchaux: Yes.

Mr. Davis: I presume now in view of the action we have taken here that Mr. Godchaux is not going to personally hear any evidence, at least at this time. He is going to work over the matter of accounting and present a report to the court on that account? [12]

The Court: That would be the desire of the Court because Mr. Godchaux is like the Court, endeavoring to be neutral, however, some testimony may have a tendency to bias, so therefore the Court feels Mr. Godchaux should be excused. Thank you for coming and could you come by the Court's office tomorrow for signing the oath. Very well, plaintiff may call the first witness.

Mr. Davis: Call Mrs. Paddock.

## FLORENCE PADDOCK

called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows on

## Direct Examination

By Mr. Davis:

Q. Will you state your name, please?

A. Florence Paddock.

Q. Where do you live?

A. 226 East 7th.

Q. Anchorage, Alaska? A. Yes.

Q. Now, how long have you been a resident of the Territory of Alaska? A. Since 1935.

Q. And has that been continuous residence?

A. Yes.

Q. You are the plaintiff in this action, are you not? A. Yes. [13]

Q. And you are the wife of Harold Paddock, the defendant? A. Yes.

Q. When were you and Mr. Paddock married?

A. In 1938.

Q. Give us the month and the day, please?

A. January 14.

Q. 1938? A. Yes.

Q. Where were you married?

A. Wasilla.

Q. Now, have any children been born the issue of this marriage? A. No.

Q. Do you have children by a previous marriage? A. Yes.

Q. How old were they when you married Mr. Paddock? A. They were three and four.

(Testimony of Florence Paddock.)

Q. And were those children then brought up in the home of you and Mr. Paddock?

A. Yes.

Q. And did they go by the name of Paddock?

A. Yes.

Q. Generally, then, were they acknowledged by Mr. Paddock as being his children? A. Yes.

Q. All right, where are the children now? [14]

A. Well, they are going to school in the states.

Q. Have you and Mr. Paddock acquired certain property since your marriage? A. Yes.

Q. I will go into that more fully at a later point. In your complaint, Mrs. Paddock, you have alleged there is an incompatibility of temperament that exists between you and Mr. Paddock which makes it impossible for you to continue living together as husband and wife. Will you tell the court in a general way what that incompatibility consists of?

A. It just got to the point where we couldn't agree on anything. It got to the point where Mr. Paddock would go off and wouldn't come home and so in October he just left.

Q. October of what year?

A. 1952.

Q. And have you lived together at all as husband and wife since October 1952?

A. No.

Q. Where have you been living during that period of time?

A. In the home residence.

Q. And where is that located?

(Testimony of Florence Paddock.)

A. 226 East 7th.

Q. And do you know where Mr. Paddock has been living?

A. Well, he has been living in an apartment over the store—McNally Apartments. [15]

Q. When you say "over the store" is that over the Paddock Paint and Furniture Store?

A. Yes.

Q. That is located on Fourth Avenue?

A. Yes.

Q. Mrs. Paddock, you know your situation better than anybody else, except Mr. Paddock, do you believe there is any possibility that you and Mr. Paddock can ever be happy any more as husband and wife? A. No.

Q. Now you lived together since 1938, is that right, up until 1952? A. Yes.

Q. Has this trouble between you been growing for a number of years last past before the final breakup?

A. Yes, for about the last five years it has been getting worse.

Q. Is it your testimony that you do not believe the two of you can ever be happy again as husband and wife? A. No.

Q. Do you believe, Mrs. Paddock, that you did what you could to make this marriage last?

A. Yes.

Q. You think there is anything at all that you could do so that the thing could be patched up to where the two of you could be happy? [16]



(Testimony of Florence Paddock.)

A. No.

Q. All right, at the time you were married, Mrs. Paddock——

The Court: Mr. Davis, the Court feels that Mrs. Paddock, as she has alleged in her grounds for divorce hasn't been specific enough if you expect her to get it.

Q. (By Mr. Davis): All right, just what is the difficulty between you and Mr. Paddock—as a matter of fact, Your Honor, they haven't lived together for over a year.

The Court: That is right, but in this instance they are both asking for the divorce and the general statement of proof which is evidence so far is certainly not sufficient to warrant the Court—why aren't they living together? What motivated the problem to the point of where it is at the present time and no proof has been put on as to that.

Q. (Mr. Mrs. Davis): Mrs. Paddock, you said that you and Mr. Paddock didn't get along. Now, what were the specific causes that made it impossible for you to get along?

A. Well—I mean, wouldn't just disagreements and temperaments not the same, things like that—I mean, you get to the point where it is even bad for your health—I mean, mentally and physically.

Q. What did you disagree about?

A. Well, he would go off weekends and never come home. I never [17] knew where he was at.

Q. Over how long a period of time did that last before you finally separated?



(Testimony of Florence Paddock.)

A. Oh, four or five months.

Q. And prior to that time you said that you had not been getting along for a period of four or five years? A. Yes.

Q. Now, had you had quarrels between the two of you? A. Yes.

Q. What precipitated those quarrels? What started them off?

A. Oh, running of the business and things like that.

Q. As a matter of fact, did Mr. Paddock like to go places where you liked to go?

A. Well, it got to the point where neither one of us could go any place. Neither one of us were agreeable on that.

Q. How did you spend your evenings? What did you do after the day's work was over?

A. I stayed home and I don't know what he did.

Q. You mean he left home? A. Yes.

Q. Did that go on for quite a long period of time? A. Yes.

Q. Did that lead to quarrels between you?

A. Well, yes.

Q. How did that come about? Did you ask him where he had been? [18]

A. No, I figured that was his own business.

Q. What caused the quarrels then? The fighting between the two of you?

A. Well, just like I said, it got to the point he was never home and we couldn't agree on anything ever.

(Testimony of Florence Paddock.)

Q. Did you talk to him about why he wasn't home? A. Yes.

Q. What did he say?

A. That is what he said—our quarreling and everything, that he just rather be out.

Q. And when he finally left home did he say anything as to whether or not he was going to continue to live with you or whether he wasn't?

A. No, he just left home.

Q. And set up his own apartment?

A. Yes.

Q. That, you say, was in October 1952?

A. Yes.

Q. Have you tried since that time to get him to come back home? A. No.

Q. Has he made any attempts to say, "Well, let's come on back and go to living together"?

A. No.

Q. In your own mind do you feel that the matter is hopeless as far as trying to live together with him? [19] A. Yes, that is right.

Mr. Davis: Your Honor, I think that about covers the grounds as thoroughly as I can cover it.

Mr. Kay: I certainly agree with Mr. Davis the word "incompatibility" means people can't get along and—

The Court: The Court doesn't want to take argument at this time, Mr. Kay, you will have your turn.

Q. (By Mr. Davis): Mrs. Paddock, when you

(Testimony of Florence Paddock.)

were married to Mr. Paddock was he running a business at that time?      A. Yes.

Q. What was the business? What kind of business was it?

A. Well, paint contracting and a little paint store.

Q. And where was the paint store located?

A. Well, at the time we were married it was located on Fourth Avenue.

Q. And was that this property that is now known as the Sunshine Market?      A. Yes.

Q. Now, at the time you were married was Mr. Paddock in the process of purchasing that property?      A. Yes.

Q. You know of your own knowledge how much the total purchase price was?

A. No, I don't. [20]

Q. Do you know of your own knowledge as to what had been paid at the time that you were married?

A. No, I know that we were paying payments on it but I never——

Q. Can you tell me how much the payments were you were making, a month?

A. I believe it was \$50.00.

Q. And did those payments then continue for a considerable period after you were married?

A. Well, it seems to me like they did.

Q. All right, that property then, was that the property that we have called the Sunshine Market property?      A. Yes.

(Testimony of Florence Paddock.)

Q. Now, in 1939, Mrs. Paddock, Anchorage was relatively small town, was it not? A. Yes.

Q. Do you remember about what the population was?

A. Oh, no, I don't. I imagine around, oh, 12 or 15 hundred people.

Q. Might have been as much as three thousand?

A. Well, it could have been, I have no idea. It was small.

Q. How many paint stores were there in Anchorage at that time?

A. Well, I believe there were about two paint stores.

Q. And then the various hardware stores also sold paints, did they not? A. Yes.

Q. Mr. Paddock, you say, was a painting contractor? [21] A. Yes.

Q. He actually went out and did painting himself at that time, did he not? A. Yes.

Q. And also hired men to help him?

A. That is right.

Q. Now, during—after your marriage did you work in that store, Mrs. Paddock? A. Yes.

Q. And during the time when Harold was out painting did you actually run the store?

A. Yes, I was there.

Q. Then following that when was it that you bought the old McNally property — the property that we now call the Paddock store property or the Paddock Paint and Furniture Store property?

(Testimony of Florence Paddock.)

A. Well, I don't exactly remember. It was about 1941 or '42, I believe.

Q. Now, you bought that I believe from Mr. McNally, did you not?      A. Yes.

Q. Do you remember the purchase price of that property at that time?

A. I believe it was \$20,000.00.

Q. And do you know how much was paid down?

A. I have forgotten. [22]

Q. Did you likewise pay that property out at so much a month?      A. Yes.

Q. And is the property paid for?

A. Yes.

Q. During the — after your marriage did you and Mr. Paddock maintain a joint banking account?      A. Yes.

Q. And was that bank account the business account?      A. Yes.

Q. Was there ever any other account except the business account?

A. No, no personal account, no.

Q. And as you took in money in the store or as money was taken for the contracting it went into that account, is that right?

A. That is right.

Q. And as money was paid out for living expenses and other expenses came out of it?

A. That is right.

Q. And that account has continued through the years up to the present time, has it?      A. Yes.

Q. All right, did it become necessary over the



(Testimony of Florence Paddock.)

period of years to borrow some money in connection with these various businesses?      A. Yes.

Q. And in borrowing money did you personally sign the notes and [23] mortgages?

A. Well, some of them I did.

Q. And I believe you signed one as late as this summer after you and Mr. Paddock had separated, did you not?      A. Yes.

Q. That is the mortgage for \$22,000.00?

A. Yes.

Q. All right, in connection with income tax, have you folks filed joint income tax returns over the years?      A. Yes.

Q. As to all the business known as Paddock Paint and later Paddock Paint and Furniture?

A. Yes.

Q. Now, the property that is now known as the Sunshine Market actually stands in Mr. Paddock's name, does it not?      A. Yes.

Q. And the property that is known as the Paddock Paint and Furniture Store likewise stands in his name, does it not?      A. Yes.

Q. How about the family home, does that stand in both names?

A. No, that is in his name.

Q. All right, did you actually—Mrs. Paddock, did you and Mr. Paddock actually conduct this business over all these years as partners?

Mr. Kay: I object as leading and calls for conclusion of [24] the witness.

The Court: Objection sustained.

(Testimony of Florence Paddock.)

Mr. Davis: As being leading or calling for conclusion?

The Court: Both. I am not sure that the witness knows what a partnership is.

Q. (By Mr. Davis): Mrs. Paddock, do you know what a partnership is?

A. Well, I figure if two people have worked in business long enough even if—like the income tax, it was written down as a partnership.

Q. Did you file, as a matter of fact, partnership income tax returns? A. Yes.

Q. Over periods of many years last past?

A. Yes, Mr. Godchaux has all of those.

Q. All right. Now, in the course of your marriage to Mr. Paddock, in addition to the two pieces of property that we have mentioned, did you then acquire the home property?

A. Yes.

Q. Where the family home is? A. Yes.

Q. Do you remember what was paid for that property?

A. Well, I believe for the property and for the lot and the building it was \$900.00.

Q. And when was that property acquired? [25]

A. Well, I don't exactly remember. I believe—we have had it eight or nine years, something like that, nine or ten years, so it would be around '43 I imagine.

Q. Was the property considerably fixed up and improved after it was purchased?

A. Yes, the house was fixed up.

(Testimony of Florence Paddock.)

Q. And have you any idea how much is presently in that house from you and Mr. Paddock? How much you put into it outside of the purchase price? A. Well, no I don't.

Q. Have you been living in that place as the family home since the time you bought it?

A. Yes.

Q. And Mr. Paddock lived there too, did he, up until the time he moved out as you testified?

A. Yes.

Q. All right, that property is the property we have marked on the exhibit here as being the family home property, is that right?

A. Yes.

Q. Now, then did you later buy a piece of property next door to that family home property?

A. Yes.

Q. And what did that property consist of?

A. Well, little furnished house. [26]

Q. Small house on a lot, is it? A. Yes.

Q. Full sized lot? A. Yes.

Q. Now, was that property in your name or Mr. Paddock's or both names?

A. I just put it in my name.

Q. All right. How was the down payment made for that property?

A. Well, it was taken out of the, you know, business.

Q. And have the payments—has the rent from that little house presently, generally carried the payments on that lot? A. Yes.

(Testimony of Florence Paddock.)

Q. Have there been some instances in which the rent has not taken care of the payments?

A. Yes, it was vacant for a couple of months that I had to pay them out of what Mr. Paddock gave me.

Q. Was that within the last few months?

A. Yes.

Q. Do you remember how much the purchase price of that property was?

A. It was \$7,500.00.

Q. Do you know how much has been paid on the account of that contract?

A. Well, it is a little over \$5,000.00 balance.

Q. I believe that Mr. Godchaux has that property as well as all [27] the other property carried on the books of the business here?

A. Yes.

Q. All right. Now then, in the course of the business did the partnership or the business acquire certain property out at Spenard? A. Yes.

Q. And I believe that that property is shown on Mr. Godchaux's statement as well, is it not?

A. It is.

Q. And that property is being purchased on contract? A. Yes.

Q. And I believe the statement shows the balance that is presently due, or was due at the end of last year on that particular contract, is that correct? A. I believe it is, yes.

The Court: Mr. Davis, I didn't understand that.

(Testimony of Florence Paddock.)

Mr. Davis: I said the statement shows a balance due as of December 31, last year.

The Court: Thank you.

Q. (By Mr. Davis): Mrs. Paddock, is the family home mortgaged or do you know?

A. No, as far as I know it isn't.

Q. The family home then, according to your testimony, is clear? A. Yes.

Q. Are the other properties—the Sunshine property or Sunshine [28] Market property and Paddock Store mortgaged? A. Yes.

Q. Do you know the total amount of those mortgages?

A. No, I don't. I believe it is around, all together around \$30,000—\$28,000 or \$26,000.

Q. And you have testified that the property next door to the family home is being purchased on contract? A. Yes.

Q. With a balance due of some \$5,000.00?

A. Yes.

Q. And the property out in Spenard likewise is being purchased on contract? A. Yes.

Q. Now, then was certain property acquired out in Mt. View? A. Yes.

Q. Do you know what that property consists of?

A. A lot.

Q. And is there a warehouse building or some kind of building on there? A. Yes.

Q. Used for storage in connection with the business? A. Yes.



(Testimony of Florence Paddock.)

Q. And was certain property acquired down in the Anchor River area or Homer area?

A. Yes. [29]

Q. Do you know what that property consists of?

A. Well, it is a recreation site, they call it.

Q. And that was purchased fairly recently, was it not?

A. Yes.

Q. Is there any improvement on that property?

A. Well, there was—no, there wasn't.

Q. Has there been some improvement since you and Mr. Paddock separated, do you know?

A. As far as I know there hasn't.

Q. All right, during the course of your marriage, I will ask, an automobile was purchased?

A. Yes.

Q. And was that purchased out of the common funds, this business account that we have been talking about?

A. Yes.

Q. And whose name was that car put in?

A. Mine.

Q. I will ask as to whether or not you before that—strike that—was that car carried as part of the assets of the business known as Paddock Paint and Furniture?

A. Yes.

Q. And the various expenses in connection with the car, were they defrayed through the business as well?

A. Yes.

Q. How about the utility bills and the oil bills and other expenses [30] of the family home, was that handled as part of the business of Paddock Paint and Furniture Store?

A. Yes.

(Testimony of Florence Paddock.)

Q. All right, going back to the automobile, Mrs. Paddock, did you trade that automobile in within the last six months? A. Yes.

Q. And bought a new car with it?

A. Yes.

Q. What kind of a car was it that you traded in? A. It was a Packard.

Q. And what model?

A. It was a 1952.

Q. 1952 Packard? A. Yes.

Q. Was it a sedan? A. Yes.

Q. How much did you get on the automobile on the trade-in? A. \$2,800.00.

Q. And how much did the new automobile cost?

A. It cost around \$4,300.00.

Q. Now, are you purchasing that new automobile then on contract? A. Yes.

Q. How much a month do you pay on that automobile? A. \$107.00.

Q. And what is that—12 months contract? [31]

A. Yes.

Q. When was the automobile purchased?

A. It was in April.

Q. Of this year? A. Yes.

Q. Then the automobile will be fully paid up then at the end of March of this coming year, is that your testimony? A. Yes.

Q. All right. I will ask as to whether or not the paint business that you testified to, later became a paint and furniture business? A. Yes.

Q. When was that change made?

(Testimony of Florence Paddock.)

A. Well, approximately — changed in around 1946 I believe. I don't know exactly—'45, I don't recall the exact date.

Q. And is the furniture end now the major portion of the business?

A. Well, they are both about the same.

Q. Is there much general contracting being done by Mr. Paddock in recent years?

A. No.

Q. So the paint business now is limited to the sale of paints and paint supplies, is that right?

A. Yes, that is right.

Q. All right, Mrs. Paddock, since your separation from Mr. Paddock how has the financial end of your living been handled? [32]

A. Well, Mr. Paddock has been paying me so much a month.

Q. Now, did he until recently continue to pay the fuel bill and the other bills in connection with the house, through the store? A. Yes.

Q. And how much was he giving you a month for your living expenses at the time that you separated?

A. Well, at the time I separated I worked up until March and then it was from, oh, I would say about, I believe it was June that he started making—you know, giving me payments.

Q. Just a minute. You worked up until March of what year? A. 1953.

Q. When you say "worked" you mean you worked in the store?

(Testimony of Florence Paddock.)

A. Yes, he was outside from January until March.

Q. And you continued then to work in the store as you had done in the past until March of this year, is that right?      A. Yes.

Q. All right, how much then—strike that question—why was it that you quit working in the store?

A. Well, we decided it was best and he said that we couldn't work there together so then, that is why I left.

Q. And when was that?

A. At the end of March.

Q. Now, from time to time during the course of the spring and summer of 1953 have you been going back to the store? [33]

A. Not very often.

Q. And I will ask as to whether or not you went back on some occasion about the month of July—remember that occasion?      A. No.

Q. Well, did you and Mr. Paddock get into some kind of argument on one occasion when you went back to the store?

A. You mean—I don't quite understand what you mean.

Q. Did you have an argument about whether or not you should come on the store premises along about July of 1953?      A. No.

Q. Well, did you ever have such an argument?

A. Yes.

Q. When was that?



(Testimony of Florence Paddock.)

A. Well, it was in November.

Q. All right, I will ask if on one occasion Mr. Paddock forcibly put you off the premises?

A. Well, yes, out of the office.

Q. When was that?

A. Well, I guess that was in July, approximately.

Q. All right, going back then to the time that Mr. Paddock left home how much did he give you toward operation of the family home expenses?

A. Well, he started—he gave me a \$1,000.00 or started out with \$1,000.00.

Q. And was that \$1,000.00 a month?

A. Well, one month.

Q. That is the first month then is it? A. Yes.

Q. And what payment was made after that?

A. Well, I believe around \$600.00 and then \$500.00 and then he started taking out the expenses on the checks.

Q. When you say that he paid \$1,000.00, the first month, was that over and above the expenses of operation of the house, the fuel, lights and the repairs, that sort of thing? A. Yes.

Q. And when he paid \$600.00 how long did that \$600.00 continue?

A. Well, I think I got \$600.00 one month and then I got \$500.00 and after that then he started taking out the expenses.

Q. How much did he pay you during the month of November? A. Well, he paid me \$400.00.

Q. How much did he pay you during the month



(Testimony of Florence Paddock.)

of December?           A. Well, he gave me \$200.00.

Q. All right, how much, if you know, have you received all together in 1953?

A. You mean that he has paid me or I have drawn?

Q. Well, what he paid you and how much you have drawn from the business account during 1953? The total?           A. Well, I don't know exactly.

Q. Now, Mr. Kay mentioned a figure here of about \$16,000.00, is that relatively right? [35]

A. Well, that is—he seemed to put down every little item from January on so I suppose, because I haven't looked at the books.

Q. At any rate the books do reflect what you have taken from the business, do they not?

A. Yes.

Q. All right, how much does it cost, Mrs. Paddock, to keep the girls in school?

A. I imagine it is around \$350.00.

Q. Per month?           A. Yes.

Q. Does that include travel expenses back and forth?           A. No, not for both.

Q. Where are the children in school?

A. Well, the oldest one goes to school in Portland and the youngest in Centralia.

Q. How much does it cost for eating for you, Mrs. Paddock?

A. Oh, about \$100.00 a month.

Q. How much does it cost for your clothes?

A. Well, for my clothes it costs around, oh, \$150.00, \$200.00.

(Testimony of Florence Paddock.)

Q. Now, you have had the right to draw checks on this joint account for many years last past, have you not?      A. Yes.

Q. Do you still have that right?      A. No.

Q. When was that cut off? [36]

A. I believe it was cut off in June.

Q. Of this year?

A. Yes, May or June.

Q. And did Mr. Paddock advertise in the papers against any of the stores granting you credit?

A. No, but he called them up.

Q. Called up the various stores where you had been dealing?      A. Yes.

Q. And did that make it difficult for you to get credit?

A. Well, after they told me about it I didn't try to get credit.

Q. All right, how much do you feel it takes a month for you to get along, keeping in mind that you—that Mr. Paddock is now requiring you to pay the oil bill, light bill, and the fact that you have got the daughters to take care of and the car payment, what does it take a month for you to get along?      A. Well, around \$750.00.

Q. As a matter of fact in these months now when you haven't been getting \$750.00 have you gone behind?      A. Well, I am behind, yes.

Q. Do you now owe certain bills?

A. Yes.

Q. How much do you owe?

A. Oh, I imagine around \$2,000.00.

(Testimony of Florence Paddock.)

Q. Do you owe tuition for the girls schools?

A. Yes.

Q. Have you incurred certain bills here and there in connection with the household?

A. Well, light bill, yes.

Q. Is the light bill presently unpaid?

A. Yes.

Q. When should it have been paid?

A. Well, it should have been paid, oh, around the 14th or 17th, when I generally get at it.

Q. Of December? A. Yes.

Q. How about the fuel bill, has that been paid as far as you know? A. Yes.

Q. You said Mr. Paddock deducted that from the check he sent to you? A. Yes.

Q. How much have you paid on the account of your attorney's fees and costs of this action?

A. \$150.00.

Q. Is there any other property, Mrs. Paddock, any other real property over and above what we have mentioned here?

A. Not that I know of. Not to my knowledge.

Q. Now, there is a stock in trade in connection with the furniture and paint store, is there not?

A. Yes. [38]

Q. Now, all of the property including the stock in trade and the real property is reflected in the books of the Paddock Paint Company, is it not?

A. Yes.

Q. However, the value set up in the books—the value of the various properties was set prior to the

(Testimony of Florence Paddock.)

time that Mr. Silberer made this appraisal was it?

A. Yes.

Q. Do you have any knowledge of what the books show the value of these particular properties to be?

A. No, it is approximately, though, what you have there.

Q. Approximately the same? A. Yes.

Q. Do you mean it is approximately the same as Mr. Silberer's appraisal? A. Yes.

Q. All right, is there anything else then, Mrs. Paddock at this time that you want to give testimony concerning this matter, either the matter of the grounds for divorce or the matter of property between you and Mr. Paddock?

A. Nothing that I can think of right now.

Q. That is all at this time. Mr. Kay will want to cross-examine you.

The Court: The Court will stand recessed for ten minutes.

Recessed 11:10 o'clock a.m. [39] Reconvened

11:23 o'clock a.m.

The Court: Mr. Kay, you may cross-examine.

Mr. Kay: Thank you, Your Honor.

### FLORENCE PADDOCK

testifies as follows on

### Cross Examination

By Mr. Kay:

Q. Mrs. Paddock, you came to Anchorage about 1936, did you not? A. It was in 1935.



(Testimony of Florence Paddock.)

Q. 1935. You went to work for Mr. Paddock in the store in 1936, I believe?

A. Yes, I imagine.

Q. And what was the nature of your work at the time you first went to work for Mr. Paddock?

A. Well, sort of taking care of the store and answering phones while he was out.

Q. Did Mr. Paddock have any other employees besides yourself at that time?

A. No, he had a partner.

Q. He was already in partnership at the time, was he not? A. Yes.

Q. Do you remember the name of the fellow with whom he was with in the painting contracting business? A. Mr. McNally.

Q. He later bought out Mr. McNally's interest in the business? [40] A. Yes, sir.

Q. What salary were you drawing back in those days?

A. Well, being like—say, just answering phones and selling what little paint there was to sell at the time, oh, approximately \$40.00 a month.

Q. Quite a bit of difference between Anchorage salaries in those days and now? A. Yes.

Q. And you continued to work then in the store until you and Mr. Paddock were married in 1938, January 1938? A. Yes.

Q. And then you continued to work after the marriage down through the years, did you not?

A. Yes.

Q. That work was more or less of your own



(Testimony of Florence Paddock.)

choice, was it not, Mrs. Paddock? You liked the opportunity to come down town to be in the store and work?

A. Not necessarily. I wanted to help and being it was slow those times it would help out in the business too.

Q. And so you continued that helping in the business on a more or less sometimes regular and sometimes irregular basis?

A. No, it was regular.

Q. Well, it wasn't daily, was it? A. Yes.

Q. Every day since 1938? [41] A. Yes.

Q. That you have been at the store?

A. Yes.

Q. What were your hours?

A. Well, I go to work at nine and leave at six.

Q. Well, now is that not your testimony that you were there every day from nine to six, is it, Mrs. Paddock?

A. Well, sure, there had to be somebody there.

Q. Well, there were other employees as the store expanded?

A. Well, yes in later years we had other employees.

Q. As a matter of fact, from about 1942 on there have been other employees have there not?

A. Yes.

Q. And isn't it a matter of fact that you frequently would not come down until 10:30 or 11:00 o'clock?

(Testimony of Florence Paddock.)

A. I always showed up unless Mr. Paddock was there.

Q. Well, if Mr. Paddock was there you didn't feel the same necessity for getting down there?

A. No, but I generally got down in the morning because lots of times he wouldn't be around there and somebody had to be there.

Q. Now, when did you first get on the bank account? When were you first authorized to draw checks on the business, if you recall?

A. Well, right after we were married.

Q. Up until that time you had not had the authority to write checks on the firm account? [42]

A. No, because I was only an employee.

Q. And there have been two bank accounts, have there not? A. Yes.

Q. And for a long period of time you generally, more or less handled the books of the business, did you not?

A. Yes, only at the end of the year an accountant took care of them.

Q. And in the course of that work you would necessarily sign checks paying the current bills?

A. That is right.

Q. Some of those checks you signed Florence Paddock and many of them you signed H. D. Paddock and you could sign either name and the bank would clear either name that you wrote on either account? A. That is right, yes.

Q. Now, you continued to be carried on the

(Testimony of Florence Paddock.)

books of the firm as an employee down until about 1948 or '49, did you not?      A. No.

Q. Are you sure of that, Mrs. Paddock? Have you ever examined the books of those previous years to see how you were carried?

A. No, I haven't.

Q. Well, you stated in answer to a question by Mr. Davis that you had filed, you and Mr. Paddock had filed partnership returns, is that correct?

A. That is correct, yes, on the income tax. [43]

Q. Now, are you sure or aware of the difference between a joint tax return filed by husband and wife and a full partnership tax return, Mrs. Paddock?

A. I mean, Mr. Godchaux has all of those—I mean, it is right down there. I took it for granted it was a partnership.

Q. Well, then you don't know whether or not the firm filed actual partnership tax returns or not, do you?      A. Well, I believe they did.

Q. But do you know?

A. Well, no unless I look at it again. I can't say positively that they did.

Q. Were you aware of the fact that in about 1947 or '48 or around in there it became advantageous for husband and wife to file joint tax returns from the point of view of submitting income?

A. Well, yes, Mr. Godchaux—if it was under joint return—like I say I can't—

Q. That is the time when you and Mr. Paddock first began to file joint tax returns, is it not?

(Testimony of Florence Paddock.)

A. Well, somewhere in there, yes.

Q. And that was because of this advantage which had been given to us by Congress permitting husband and wife to submit income? A. Yes.

Q. You and Mr. Paddock ever have a written partnership agreement of any kind?

A. No, I didn't figure it was necessary. [44]

Q. Did you ever have an oral partnership agreement? Did Mr. Paddock and you ever say so in so many words?

The Court: You asked two questions.

A. I mean after we had been married so long you just don't ask your husband that you should have a partnership, you don't dream of it.

Q. In other words, then the answer is that you and Mr. Paddock have never had either a written or oral partnership agreement of any kind?

A. No, that is right.

Q. And during all these years you have had either one or two bank accounts?

A. Well, in the First National Bank we always deposited First National checks and the Bank of Alaska the same. I mean, that is the way Mr. McNally started it and the way we continued doing it.

Q. And those two bank accounts were either in the name of Harold D. Paddock or Paddock Paint and Furniture?

A. Well, they were under Harold D. Paddock and Florence Paddock.

Q. Now, you are sure they were under the name of Florence Paddock?



(Testimony of Florence Paddock.)

A. Well, no, the Bank of Alaska could have been. The First National Bank wasn't.

Q. As a matter of fact, both bank accounts were just H. D. Paddock or Paddock Paint and Furniture?

A. I believe—yes. [45]

Q. But you were authorized to sign checks?

A. Yes.

Q. Other employees of the firm are authorized to sign checks on those accounts, are they not?

A. No, well, generally if we went Outside or something, to the States, but otherwise they weren't.

Q. Well, as a matter of fact, there are at least two employees now and have been for several years that are authorized to sign checks?

A. Well, we went to the States one time and they were and I don't know if Mr. Paddock ever had them taken off there or not.

Q. How long ago was that? Several years ago?

A. Oh, I imagine it was a couple or three years ago.

Q. Now, you state that down during the course of the years that, you testified on direct examination, that you had signed some notes and mortgages relating to the business?

A. I believe I have.

Q. Those notes, aside from this last mortgage since you have separated, were largely relatively small loans?

A. That is right.

Q. Necessary while Mr. Paddock was Outside from time to time?

A. Well, sometimes and sometimes small notes



(Testimony of Florence Paddock.)

and mortgages—yes, they were on the property while he was here too.

Q. Mr. Paddock was able to borrow considerable sums of money at [46] either bank without your signature was he not? A. Yes, he has.

Q. As a matter of fact, he was able to borrow as much as \$20,000 in January 1947 from the Bank of Alaska without your signature, was he not?

A. Well, that would just—due to their fault, otherwise they would have had me sign before, just like they did in May.

Q. The occasions when you had to sign were usually when Mr. Paddock was Outside and would return and then they would request his signature on the note in addition to yours?

A. Not necessarily, as far as I know they didn't. I would go down and sign it. It was never too great an amount.

Q. Mr. Paddock was able to borrow \$12,000 from the First National Bank or National Bank in August '49 without your signature, was he not?

A. That is probably right.

Q. And——

The Court: Mr. Kay, the Court will point out to you that the Court considers marriage a partnership and, therefore, based upon statements of Judge Dimond and Judge Folta and experience of this Court, it is, therefore, the Court's feeling that any improvements to the contrary will be a waste of time.

Mr. Kay: Let me get the Court's thinking

(Testimony of Florence Paddock.)

straight. The mere fact that the people are partners constitutes the wife a partner in business?

The Court: No, the mere fact they are married and in this [47] case particularly where they have worked together.

Mr. Kay: Well, that is the point, if I may just express myself briefly. Certainly the mere fact that people are married doesn't constitute the wife in any sense a partner in business. My wife is not my partner, nor is your wife yours. Even if I had a grocery store, filling station or anything, if there is a partnership here in the business it depends entirely on the partnership principals and partnership laws and marriage, as far as I can see, would have no more to do with it than if they weren't married and had worked in the business under the same circumstances during the years. I feel I am legally right on that point. The Court has briefed me on the situation, on this situation, however, I don't want to prolong the testimony if Your Honor feels otherwise.

The Court: I am doing it for two reasons. One to shorten the time and the other reason is to put you on notice as to the Court's thinking on the matter.

Mr. Kay: Well, in that connection then I would like to, after the close of the evidence, submit a little memorandum on the law concerning that.

The Court: Well, the Court would rather have more than a memorandum. It will take more than a memorandum to convince the Court what you

(Testimony of Florence Paddock.)

state legally and maybe technically might be one thing, but as to the rights of the parties and divorce proceeding as set out by—— [48]

Mr. Kay: The rights of parties of divorce proceedings is just what the Court feels is right. The Court has almost complete discretion.

The Court: That is what the Court wanted to point out.

Mr. Kay: Oh, yes, no question about that. I am just going into that to point out there is no partnership in the legal sense that would not effect whatever decision the Court might make in the division of the property.

The Court: The point that appears to that court is that we are consuming time here on something that would have no bearing or wouldn't bind the court.

Mr. Kay: Well, I think if there was a business partnership, if they had agreed to become partners, either orally or in writing and deducted the business as a partnership, equal partners, then there is no sense in us being here in court. Then dissolve the partnership and each get 50 percent, but that isn't, as I understand the law, the situation at all and that is what we are here to decide as to what would be a fair and reasonable portion of the property for the Court to set aside to one or the other of these two people and what I was trying to get away from was Mr. Davis' insistence that this was a partnership.

The Court: Well, of course, I think the Court

(Testimony of Florence Paddock.)

probably has expressed his thinking on the matter, that is simply this: If there had in fact been a written partnership or if in fact there had been an agreement as an oral partnership, it would have [49] no bearing upon this case, based upon the fact she has been working most of the time unless you can prove to the contrary. That is why the Court feels out of deference to your opinion, the Court should express his opinion to you and you can guide your trial of the case accordingly.

Q. (By Mr. Kay): Well, now, Mrs. Paddock, did you have any money or properties of your own at the time you married Mr. Paddock?

A. No.

Q. You owned no real property?

A. No.

Q. Did you have any personal property to amount to anything?           A. No.

Q. During the period of your marriage have you contributed in cash, anything, at any time to the business or the acquisition of the property by either one of you?

A. Well, not actually in cash. Just in time and work and my Mother kept the children for two years after we were married to help out.

Q. But to get back to the question, you haven't put in any money into the business?

A. No, not actual cash, no.

Q. Aside from the piece of property next to the home, which you bought for \$7,500.00 on which



(Testimony of Florence Paddock.)

there is a \$5,000.00 balance, do you have any property in your own name now? [50]

A. No.

Q. How about the interest in a corporation, I believe you have probably forgotten about?

A. That is dissolved.

Q. That was a corporation organized to operate a lodge at Wasilla? A. Yes.

Q. You say that corporation is now dissolved?

A. Yes.

Q. Do you consider your interest in that of any value whatever at the present time? A. No.

Q. The automobile is in your name is it not?

A. Yes.

Q. So what you have in your name now is the small house property next to the home?

A. Yes.

Q. And which you have an equity of about \$2,500.00? A. That is right.

Q. And the new Packard on which there is a balance of \$700.00 or \$800.00 left to pay?

A. Yes. The reason I put it in my name was that when he bought the other property, why, I wanted my name on the papers too and he said "no".

Q. So the other properties then are all in the name of Harold D. [51] Paddock? A. Yes.

Q. Now you stated in answer to response to a question by Mr. Davis that you believed that you needed approximately \$750.00 per month?

A. Yes.



(Testimony of Florence Paddock.)

Q. To get along, is that right? A. Yes.

Q. That would amount to about \$9,000.00 a year, would it not?

A. That is with my working too.

Q. That is in addition to what someone might earn?

A. It would cost me around, oh, \$1,000.00 a month with the girls out and everything if I didn't work myself.

Q. Did you work any during 1953?

A. Very little.

Q. So it is your testimony then that you need \$750.00 per month in addition to whatever you might earn to get along, is that right?

A. Yes.

Q. And that you feel would be in the neighborhood of \$1,000.00 a month? A. Yes.

Q. Could you break down those amounts any, Mrs. Paddock, break it down in the items you would need and so forth?

A. Well, like I say for every day living besides the actual [52] expenses of the home, keeping up the home and everything.

Q. Well, now the home is paid for is it not?

A. Yes, it is paid for.

Q. No rent, payments or anything like that?

A. No.

Q. And I believe you said that you could eat on—what was it, \$150.00 or something—

The Court: \$100.00.

Q. \$100.00 per month? A. Yes.

(Testimony of Florence Paddock.)

Q. I didn't understand what you said about clothes?

A. Well, I said around \$100.00 that would just be—well, not every month, no, but——

Q. Now, what other expenses would you have?

A. Like keeping the girls in school and their expenses, I mean, their board, tuition—runs around \$350.00 that is considering the clothes and different little things that come up at school. I mean, maybe at the time it is small amounts, but it all adds up. Some months it wouldn't run that much and some months it would.

Q. That is \$350.00 for two girls? A. Yes.

Q. Well, now what else?

A. Well, like the payments on the car.

Q. Anything else that you can think of? [53]

A. Well, there would be the ordinary—fuel—ordinary expenses.

Q. Fuel and utilities. What do utilities run out there?

A. Well, utilities—around \$35.00.

Q. And fuel runs what?

A. Oh, I imagine around, well, it varies so much, especially this year. I would say around \$75.00.

Q. Can you think of anything to add in there?

A. Well, not offhand—the taxes on the home place.

Q. You have received so far this year from Mr. Paddock in the neighborhood of, well, to be exact \$15,997.60, have you not?

A. Well, that is what he says.

(Testimony of Florence Paddock.)

Q. Through the 30th day of November 1953?

A. Well, I know what he gave me from June to November, but before that, I mean, that is what was on the books. Now the bills and things I haven't gone over them myself to see just what he counted in that.

Q. And these last several months—you testified he gave you \$400.00 in November, \$200.00 in December?

A. Yes, that is with the bills taken out.

Q. Those amounts were cash after he had paid the bills in connection with the operation of the house?

A. Yes, it was. It was \$500.00 then after he had taken out the bills——

Mr. Kay: Could I confer with my client?

(Mr. Kay confers with client.) [54]

### Redirect Examination

By Mr. Davis:

Q. Mrs. Paddock, in connection with one of Mr. Kay's questions I think that you said that you had actually been carried on the payroll of the business until, say, 1946, 1947, something like that, was that your answer?

A. Well, no I don't recall being carried on the payroll.

Q. If you were?

A. I don't know what they mean by "carried on the payroll".

(Testimony of Florence Paddock.)

Q. If you were carried on the payroll was any money paid to you as an individual?

A. Well, no.

Q. And if any money was paid to you, did it go back into the bank account?

A. It went right back into the business if there was, but there wasn't.

Q. Since the time you were married have you ever drawn any wages that went to you as an individual?      A. No.

Q. What does a clerk in the store over there make a month?

A. \$475.00 and \$500.00 a month. Some of them make \$475.00 and \$500.00 and I don't know what the other one makes.

Q. And has that been about the scale for several years last past? [55]

A. No, around from \$350.00 to \$400.00.

Q. Over what period, Mrs. Paddock?

A. Well, of course, they had been getting a raise, but, oh, I imagine since 1946.

Q. And when was it changed up to \$450.00 to \$500.00, if you know?

A. Well, let's see, our furniture man, when he started to work there. I believe he has been working about three years and then this last clerk, I think she started about four months ago. I don't recall they have hired them since I left—two of the clerks.

Q. What are they getting?

(Testimony of Florence Paddock.)

A. Well, one gets \$475.00 and, I don't know, the other one gets \$500.00.

Q. Now, you worked there from October last year when you separated up until probably March of this year. During that period of time were you paid any wages as wages? A. No.

Q. And if any wages were charged off to you did that go into the family bank account or the business bank account?

A. Well, it would have had there been any charged off to me.

Q. But as an individual you didn't get anything except these drawings that Mr. Kay is talking about? A. No.

Q. Over the period of years, Mrs. Paddock—in the early stages of 1939 this wasn't a very prosperous business was it? [56]

A. Well, it was slow.

Q. Wasn't much business here at that time, was there? A. That is right, no.

Q. And then the Army and Air Force moved in in 1941 and business started to expand along with all the other businesses in the area?

A. That is right.

Q. All right, during that period of time were you working in the business? A. Yes.

Q. Since you were married back in 1939 when you needed money for the operation of the house, or to go buy a new dress or something of that kind, did you just write a check on the bank account?

A. It was written off or else I would simply take



(Testimony of Florence Paddock.)

cash or just charge it to Paddock, just charge to he or I.

Q. As a matter of fact, until you separated you didn't keep any straight account between you and he? A. That is right.

Q. Anything that was drawn for either of you was drawn as common drawing account, was it not?

A. Yes.

Q. Since you have separated he apparently has set up some other system, is that right?

A. That is right.

Q. All right, can you tell us how many employees there were in that [57] business in 1942?

A. Well, I think perhaps at the start of the Army and construction we had another clerk.

Q. You are talking about in the store?

A. Yes.

Q. And then did Mr. Paddock have painters helping him on the outside? A. Yes.

Q. That painting business was largely seasonal?

A. Yes.

Q. It was mostly in the summer time?

A. Yes, but there was quite a bit in the winter. It didn't die out altogether. There was always one or two or three men working.

Q. Is it a true statement then that frequently, generally, Mr. Paddock worked outside and you worked in the store? A. That is right.

Q. And after 1942 you added another clerk?

A. Yes.

(Testimony of Florence Paddock.)

Q. And as time went on you added still more employees? A. Yes.

Q. How many have they got now in that business?

A. Well, they have three besides Mr. Paddock.

Q. Three besides Mr. Paddock. All right.

Mr. Davis: I think that is all. [58]

The Court: Any recross?

Mr. Kay: Just one or two questions.

#### Recross Examination

Q. (By Mr. Kay): During the years then you have drawn whatever you needed or wanted from either bank?

A. That is right, so has he. I never checked on him, I figured while he worked what he did was his own business.

Q. But the bank accounts were there and you, as his wife, was entitled to what you needed?

A. That is right.

Mr. Kay: Nothing further.

Mr. Davis: Nothing further.

The Court: You may step down.

(The witness was thereupon excused and left the stand.)

The Court: How much more time does counsel feel will be consumed in trial of the case?

Mr. Davis: As far as I am concerned I intend to call Mr. Silberer, Your Honor, at 2:00 o'clock, if I may and I have no objection at all to resting at this time and, in fact, Mr. Kay wants to examine

Mr. Silberer more than I do, so if you want to go ahead with the defendant's case it is all right with me.

The Court: Does counsel feel that you can finish up this [59] afternoon?

Mr. Kay: Oh, yes, Your Honor, our case won't take over a half hour or so.

The Court: Very well. The court will stand recessed until 1:30, but this trial will be continued until 2:00 o'clock.

Recessed 12:00 o'clock noon. Reconvened 2:08 o'clock p.m.

The Court: The Court would like to call Mrs. Paddock for two or three questions that he would like to ask before putting on Mr. Silberer. It won't take but just a moment, if you don't mind.

Mr. Davis: All right.

The Court: Then we will have continuity of her testimony.

### FLORENCE PADDOCK

resumed the witness stand as a witness on behalf of the plaintiff, and having previously been sworn, testifies as follows on

#### Examination by the Court

Q. Do you know how much your husband was worth when you married him?      A. No, I don't.

Q. What did his property consist of at that time, if you know?

A. Paddock's Paint Store where the Sunshine Market is.

(Testimony of Florence Paddock.)

Q. How large an inventory did he have at that time, if you recall?

A. Well, I can't say. He has a record some place in his books, but it wasn't too great. [60]

Q. Well, I want to know what you know about it?

A. Well, that I can't answer because it has been quite some time back and I have never checked up on it.

Q. Was it worth \$1,000.00, \$2,000.00, \$3,000.00?

A. Oh, I imagine about \$5,000.00. I can't say truthfully, but I imagine in that neighborhood.

Q. Did he have anybody working for him aside from himself at that time?

A. Well, he had painters. It was in the contract work, he worked himself and then he would hire one or two painters.

Q. But you are the only one that worked in the store, is that right? A. Yes.

Q. Do you know whether or not this property or the inventory, and, well, balance sheet which reference has been made to for the year 1952, shows a depreciated value of the property or is that in fact an inventory value? A. Well,—of 1952?

Q. Yes, December 31?

A. Well, I don't know exactly what you mean by that.

Q. The Court: Does counsel have any further questions?

Mr. Davis: I think we can bring out the answers of those with Mr. Paddock and with Godchaux.

(Testimony of Florence Paddock.)

The Court: The Court has one more question.

Q. (By The Court): Do you think you have contributed equally to the business which you and your husband have been engaged in?

A. Yes, I feel that I have.

Q. Have you put in as many hours as he has?

A. Just as many, yes.

The Court: Does counsel have any questions?

Mr. Davis: That is all.

Mr. Kay: No.

(The witness was thereupon excused and left the stand.)

Mr. Davis: I would like to call Mr. Silberer now, please.

The Court: Mr. Silberer may be called and sworn.

#### EARL E. SILBERER

called as a witness on behalf of the plaintiff, and being first duly sworn, testifies as follows on

#### Direct Examination

By Mr. Davis:

Mr. Davis: Your Honor, I think that the defendant will stipulate that Mr. Silberer is a duly authorized and qualified real estate broker in Anchorage and able to testify concerning values of property here.

The Court: Is that correct?

Mr. Kay: That is correct.

The Court: Very well, let the record so state.

Q. (By Mr. Davis): Mr. Silberer, at my request



(Testimony of Earl E. Silberer.)

in the first part of May did you make an appraisal of certain property belonging to Paddock?

A. I did.

Q. I hand you what has been marked as Plaintiff Exhibit No. 1, dated May 9, 1953, and ask if that is a copy of the appraisalment that you made?

A. It is.

Q. Now, in making this appraisal, Mr. Silberer, at that time did you go through the property that is known as the family home?

A. I did not.

Q. In connection with the property, at that time did you attempt to value it on a conservative basis?

A. I have always tried to base all my appraisals on a conservative basis.

Q. And is this one so based?

A. I would say it on a conservative basis.

Q. In appraising the property did you attempt to take into consideration all the various factors concerning the location and type of the building and the present market of the property?

A. Well, when I make an appraisal of a piece of property I take first the location, surroundings, lot value and then jointly the house and lot value, jointly making my total figure. If this was being broke down where the house was always going to be there it would be my—my opinion would be a lower value on the land.

Q. Are you talking now about the home property?

A. Yes, I am talking about the home property.

Q. In that connection you have put a value on

(Testimony of Earl E. Silberer.)

the land of the home property of \$5,000.00. Now, is it your testimony that the value of the land as such would be less if it is going to be continued to be a home?      A. That is right.

Q. You put the higher value on it because the property is located in semi-commercial district, as to the value of the land?      A. That is right.

Q. Now, in connection with the commercial property, Mr. Silberer, has there been any particular change in the value of commercial property since you made this appraisement back in May?

A. On commercial property it is my opinion that the prices are the same as they had been in the last year.

Q. Do you feel then that the prices you have put on the commercial property as of last May are still fair property appraisals?

A. I would say that they are very close in there to the same figure.

Q. All right, now in connection with the house property, you said that you did not go through the house, inside the house at the time you made the appraisement?      A. That is right.

Q. Did you make an inspection of that house this morning?

A. I made a brief inspection of it this morning. I did not enter all the rooms. It was not convenient to enter all the rooms and the interior of the house is very nice and it [64] would, basing it on today's market, after seeing the interior of the house I

(Testimony of Earl E. Silberer.)

might consider increasing the valuation of the house some.

Q. And to what figure would you increase the value of the house after having seen the inside?

A. Well, the total figure of the house and the land, I would say some place, approximately \$20,000.00 is my opinion. If I was to try to sell the house I don't believe I could get any more for it. That is my honest opinion of that.

Q. Do you think, taking into consideration the location of the house and its age and the general construction, the type of building, do you think you could get \$20,000.00 for that house on the present market?

A. It would seem to me that it would be rather difficult to get the exact amount for that, of course, it is always hard for real estate—it is always hard to tell the exact top dollar that one individual will pay for a piece of property.

Q. All right, in your opinion do you feel that if that house were put up for sale today that you could get \$20,000.00 for it?

A. I would say \$18,500.00 and \$20,000.00 some place in that neighborhood.

Q. What is the location of the house?

A. It is on 7th Avenue, I think, I jotted the number down—226 East 7th.

Q. Is that near the cemetery? [65]

A. Yes, it is.

Q. And the cemetery is it—what is it, East C Street?

A. I believe it is East C.

(Testimony of Earl E. Silberer.)

Q. And is this house close to East C Street on 7th?      A. That is right.

Q. What sort of house is it? How is it built?

A. Well, it is stucco on the outside, has a large entrance way. On the inside you come into the living room, 2 bedrooms and bath and then a large, well, we call them, vestibules or entrance way at the rear of the house. I did not enter one bedroom or the bath this morning.

Q. All right, then——

A. It was very quick and brief inspection this morning just of the interior.

Q. But the interior of the house is nicer than what you might expect from looking at it from the outside, is that your testimony?

A. That is right.

Mr. Davis: That is all.

### Cross Examination

By Mr. Kay:

Q. Just a few questions, Mr. Silberer. In considering that value on the house did you consider the furnishings? [66]      A. No.

Q. So that your price of \$18,500.00 to \$20,000.00 would be your considered estimate of the value of the building and the land?

A. That is right.

Q. You noticed that the house was nicely furnished, did you not?

A. It is very nicely furnished.

Q. So considering the value of the furnishings



(Testimony of Earl E. Silberer.)

in the house, would that possible if you sold it completely furnished with freezer, refrigerator, stove, wall carpeting and that type of thing, do you think that might increase the value to the neighborhood of, oh, say, \$20,000.00 to \$25,000.00?

A. I would say approximately from \$2,000.00 to \$2,500.00 Wendell.

Q. Now, Mr. Silberer, how close an examination did you make of the building in which the Paddock Paint and Furniture Store is located?

A. Well, I have been in that building a number of times since I have been in Anchorage and I went down there, I don't have all my figures with me, but I went down and stepped off the building and figured it more or less on a square footage basis and then I put the value of the land at \$25,000.00. I figured out that footage basis figuring 50 foot lot.

Q. Well, that building is an old building which has been considerably remodeled over the years?

A. That is right. [67]

Q. The same is true of the Sunshine Market building?

A. As I understand it the Sunshine Market building is not, if I recall it has been quite some time since I made this and as I recall the Sunshine Market Building is not part of it—the building wasn't being appraised, just the land, am I right on that?

Mr. Davis: No, there was a building.

Mr. Kay: I think that is Item No. 2, isn't it, Ed?



(Testimony of Earl E. Silberer.)

Mr. Davis: Two and three.

Q. (By Mr. Kay): Two and three?

A. That is right, the building or the Sunshine Market was appraised at \$6,000.00.

Q. That is in a pretty delapidated shape?

A. That is right.

Q. And then you didn't appraise the building on the other lot because that building does not belong——

A. That is the one I had mistaken with this.

Q. Do you feel that these figures that you have given then, both on your estimate and on the witness stand, are reasonable conservative figures based on your experience?

A. I would say so, Wendell.

Mr. Davis: That is all, as far as I am concerned.

The Court: Thank you. You may step down, Mr. Silberer.

Mr. Kay: I would like just a moment. Just one other [68] question.

Q. (By Mr. Kay): Mr. Silberer, in considering the value of the home property out there did you consider the double garage in the rear?

A. Yes, we took that into consideration.

Mr. Kay: I see.

Mr. Davis: I would now like to ask, if I may, that Mr. Silberer be excused because he has other business and wants to get back to it.

The Court: Does counsel have any objection?

Mr. Kay: No objection.

The Court: Very well.

(The witness was thereupon excused and left the stand.)

Mr. Kay: Call Mr. Paddock.

### HAROLD D. PADDOCK

called as a witness on behalf of the defendant, and being first duly sworn, testifies as follows on

#### Direct Examination

By Mr. Kay:

Q. Your name is Harold D. Paddock, is it not?

A. Yes, sir.

Q. You are the defendant in this divorce case here today? A. Yes, sir.

Q. Mr. Paddock, how long have you lived in Alaska?

A. Since 1931 in Anchorage, two and a half years prior to that [69] in Juneau.

Q. During all the time that you have been in Alaska you have been in the painting, paint contracting, and paint and furniture business, have you not?

A. Well, I have been in the paint contracting business and paint retail business, but it is not until the later years that I have been in the furniture business.

Q. When you came to Anchorage what business did you go into in March 1931?

A. Paint contracting.

Q. And did you go on your own or did you go in with somebody?

(Testimony of Harold D. Paddock.)

A. I started on my own and then I bought in a half interest in a partnership.

Q. When did you buy that half interest in a partnership?      A. In '32.

Q. 1932?      A. Yes.

Q. Who was your partner?

A. Edward T. McNally.

Q. He is now deceased?

A. That is right.

Q. Do you recall what you paid for the half interest in Mr. McNally's paint contracting business that you bought back then in 1932?

A. Wasn't too large a sum. About all they had at that time was [70] paint equipment and was somewhere less than \$1,000.00 at that time.

Q. That was in 1932, depression prices too?

A. That is right.

Q. Well, now when did you first open the store?

A. Late '33 or early '34 we had taken on a Dutch Boy agency for Dutch Boy paints, which I still have today, and put in a stock of paints and wallpaper.

Q. And was that store located down in what is now the Sunshine Market Building?

A. No, prior to when we first opened at was where the Richmond Cafe or Bar is now.

Q. Right in the next block?

A. Yes, and I later bought the property and moved down to where the Sunshine Market is.

Q. When did Florence, Mrs. Paddock, come to work for you?

(Testimony of Harold D. Paddock.)

A. About '36, I believe.

Q. Now, at the time she came to work for you where was the store? Was it still the Richmond or had you moved down to the Sunshine Market?

A. Still at Richmond.

Q. When did you buy the Sunshine Market property?

A. I think it was about '37.

Q. Do you recall what you paid for it?

A. Around \$6,000.00. [71]

Q. Did it have the present building on it at that time?

A. It had a building on it which I remodeled.

Q. Was that building an old building at that time or a new one?

A. It was a log building—had a 7 foot ceiling in it before I moved into it.

Q. How extensive was the remodeling which you did do? Do you recall what all you did to it?

A. Well, I raised the ceiling, raised the floor up to level with the sidewalk—the floor was down probably 10 inches or so below the sidewalk. It was a building that was put in before the streets were leveled and made probably 10 inches below the street level. I raised that up to street level, and as I say, there was only a 7 foot ceiling in it so I had to raise the ceiling to 10 foot ceiling and did considerable work on the foundation.

Q. In other words, it was a pretty complete remodeling job?

(Testimony of Harold D. Paddock.)

A. Probably between \$2,000.00 and \$2,500.00 remodeling.

Q. At those prices? A. Yes.

Q. And is the building still substantially in the same shape as it was when you completed your remodeling?

A. Yes, with the exception of a period of several years now, why, the foundation is in need of repair and quite a bit of repair is in need on it. In fact I have to do some before license will be extended to present occupancy in it. [72]

Q. In other words, the City is requiring that you make some repairs to that foundation and other repairs before they will release it for next year, is that correct? A. That is right.

Q. Now, did you pay cash for that building or did you pay some down on monthly payments, do you recall?

A. At the time it was partially cash, yes.

Q. You don't remember how much down and how much was on the balance do you?

A. No, I don't recall exactly that far back.

Q. Well, now you and Florence were married in January 1938, were you not? A. Yes.

Q. Now, at the time you and she were married can you tell the Court to the best of your recollection just what property you had at that time? You had half interest in the paint company in the first place did you not?

A. I had bought out the other half interest of my partner by the time I was married.



(Testimony of Harold D. Paddock.)

Q. Oh, you had bought out Mr. McNally's half?

A. Yes.

Q. Do you recall what you gave him for the other half after you built it up during this period that you were working with him?

A. Well, I don't recall exactly. We had increased our business in stock which we both drew very little money and applied to [73] the business and had increased quite a little to the extent of having a new truck and larger stock of paint and wallpaper and larger employment of men.

Q. You can't recall the figure what you did pay for his half interest?

A. Well, I would roughly say the equity was somewhere between \$10,000.00 and \$15,000.00.

Q. What you mean then is at the time of your marriage you were—your net worth was somewhere between \$10,000.00 and \$15,000.00?

A. Well, including the property and all, probably worth a little more than that, but the business itself—

Q. Oh, that is just what you consider your interest or your paint company worth?

A. Well, we had to take a \$2,500.00 stock to get the agency for the Dutch Boy paints, they required \$2,500.00 stock, and then we increased to that.

Q. That was in 1935 and by 1938 you had built that up—is that your testimony—built up your stock and inventory?      A. Yes.

Q. Now, let's see, besides the equity of the Sunshine Market Building and your paint business,

(Testimony of Harold D. Paddock.)

paint contracting business, did you have any other property at the time you were married?

A. Nothing that amounted to anything. I had a lot that I bought on delinquent tax sale that didn't amount to much.

Q. Did you eventually sell that? [74]

A. Yes, I sold that later.

Q. Well, then could you give the Court a rough estimate of what you consider a fair value—fair figure for your net worth at the time of your marriage?

A. Well, that is a little hard to make a statement on that, considering the valuation of the business which was built up over a period of years and bought into a well established business—that was worth quite a bit is the reason that I bought into it and so in dollars and cents to say what it is worth or what somebody pays you for clientele for the business that you had would be hard to state.

Q. Well, you have given us one figure on that, roughly, of just the business alone of around \$10,000.00. Would you say that \$15,000.00 or \$20,000.00 would be a fair figure for your net worth at that time?

A. Yes.

Q. Well, now when did you buy the Sunshine Market, I mean, the store property what is now the location of Paddock Paint and Furniture?

A. 1942.

Q. Was the building already located on the property at that time?

A. Yes.

(Testimony of Harold D. Paddock.)

Q. What was it, a new, old, or what kind of building was it at the time you bought it?

Q. Well, it was pretty badly run down and it was mainly apartments, [75] and—of small apartments, and the portion where the paint store part is now was occupied by the Railway Express Company.

Q. Do you recall what you paid for that property?      A. \$20,000.00.

Q. Now, that was in 1942?      A. Yes.

Q. And since that time you have substantially remodeled it from time to time, have you not?

A. Yes, it has been completely remodeled, completely rechanged.

Q. Part of it has been reconstructed in fact has it not?

A. You might say it all pretty much has, but is in need of it again.

Q. When did you buy the home property we have been talking about here as your home?

A. Well, it was along about the same time. That was purchased a little prior to that. It was still in '42 or late '41, I don't remember just offhand.

Q. You bought the lot and house separately and then moved the house on the lot, did you not?

A. No, the building was moved on to the lot by somebody else, who tore it up in moving, and it was in pretty sad shape and I bought it very reasonable due to the fact that it was badly torn up. It dropped down, pushed the floor out of it and

(Testimony of Harold D. Paddock.)

all that while turning and pulling it in on the lot, so I bought it pretty reasonable due to that fact.

Q. Do you remember what you paid for the home property back in '41, '42?

A. Neighborhood of \$800.00.

Q. That is both the house and lot?

A. Yes.

Q. Now, you have done considerable remodeling, have you not?

The Court: Counselor is that important, what he paid for it? It was acquired after his marriage.

Mr. Kay: It seems to me it is important in this respect: To bring out the chronology of acquisition of this property. From my point of view I would like to show that it was actually acquired by Mr. Paddock very early in the marriage, either before or at the time of it, or a year or so after the marriage. Now surely we are not going to—I don't wish to debate the point, but the point to me is what has happened since then has largely been, at least as far as the increase in value of this property, has just been normal increase of all property in the Anchorage area by reason of the growth of the area.

The Court: Wouldn't the Court take that into consideration?

Mr. Kay: I certainly hope so. It is just something that I wanted to bring out, however, if I am going into it too extensively I will be glad to hurry it along.

The Court: The Court doesn't want to tell you



(Testimony of Harold D. Paddock.)

how to try your case. The Court just wanted to hurry along unless you think you have overlooked something. [77]

Q. (By Mr. Kay): Then, Mr. Paddock, it has been extensively remodeled, is that correct?

A. I put about—in dollars and cents—better than \$12,000.00 in it and the big majority of the work was done by myself.

Q. Now, then you have since bought a hundred foot frontage on Spenard Road across from Sweum's Grocery? A. Yes.

Q. What did you pay for that?

A. \$15,000.00.

Q. How much of that remains unpaid on the land?

A. Around—there is a building on it too—around \$12,000.00.

Mr. Davis: I missed that, I am sorry.

A. Around \$12,000.00 I believe.

Mr. Davis: About \$12,000.00?

A. I think that is about correct.

Q. (By Mr. Kay): You then also placed a warehouse building on that property, have you not?

A. Yes.

Q. What was the cost of that building?

A. \$4,200.00.

Q. And getting it on there cost you something too, did it not?

A. \$4,200.00 or \$400.00 to \$500.00, I believe, was the cost of the building to put it on the lot, but



(Testimony of Harold D. Paddock.)

it cost \$800.00 to [78] fix the foundation to support it after it was moved on.

Q. So the cost of that building located on the lot was about \$5,000.00?      A. That is right.

Q. And is that paid for—the building?

A. The building is paid for, yes.

Q. Now, you also have a lot in Mt. View, and a small building, do you not?

A. That is right.

Q. What did you pay for that and when did you acquire it, do you know?      A. 1950.

Q. And do you recall the amount you paid for it?      A. \$750.00 for the lot.

Q. What would you say it is now worth?

A. Between \$1,000.00 and \$1,500.00, maybe.

Q. All right, there was some mention of a recreational site near the Homer Air Strip. About how much do you have invested in that?

A. About \$200.00—between \$200.00 and \$250.00.

Q. Have you received patent to it or is it still pending?      A. Yes.

Q. You do have patent?      A. Yes.

Q. Do you consider it worth much more than what you have in it? [79]

A. As speculation. I bought it on speculation.

Q. But it has no great value then right now except to hold for speculation, of what you have in it, is that right?      A. That is right.

Q. Now, when you and Mrs. Paddock were married she was then working for you in the store, was she not?      A. Yes.

(Testimony of Harold D. Paddock.)

Q. What was the nature of her duties at that time, Mr. Paddock?

A. Answering the telephone mainly and taking appointments for contract work and sell paints, mark prices, etc. or show wallpaper.

Q. Just a general job of employee in a paint store or small store, is that correct?

A. That is right.

Q. Now, was there any difference—change in those duties after your marriage? A. No.

Q. What has been the nature of her work in this store then—has her work in the store in the years since that time been substantially the same?

A. About the same I would say, yes.

Q. There has been an addition in the fact that of recent years she has more or less kept the books of the store, has she not?

A. Yes, to a considerable extent. She mailed bills, posted accounts. [80]

Q. And write checks? A. Yes.

Q. Now, who has been the manager. Let's take the paint contracting business first. Did Mrs. Paddock have anything to do with the paint contracting business while you were in it other than answering the phone and taking appointments?

A. No.

Q. She didn't have anything to do with bidding the jobs, did she—estimating?

A. Well, I don't think she would be capable of—

Q. Did she? A. No.

(Testimony of Harold D. Paddock.)

Q. Did she have anything to do with hiring the help in your paint contracting business?

A. No.

Q. Have anything to do with the actual execution of the work whatsoever?

A. No, other than what has been mentioned of answering the phone and taking appointments.

Q. Now, as between—let's take the period down to the first—strike that—when did you go out or stop your paint contracting business?

A. Early part of July of this year.

Q. July of this year?           A. Yes. [81]

Q. Now, let's take the period down to, say 1945. Between 1938 and 1945 which was the money maker, the income producer—the major portion—the retail store or the paint contracting business?

A. The paint contracting.

Q. And at the time you got out of the paint contracting business did that continue to be the case, or did the store gradually take the greater—bring in the greater portion of income?

A. Well, that is something that would vary. Depends on how much you wanted to devote to either one of them.

Q. Let's break it down a little further. Between 1945 and 1950 did the paint contracting business continue to be the major income producer?

A. Well, I would say "no" because I was trying to get away from the paint contracting business due to the larger investment and time that it had

(Testimony of Harold D. Paddock.)

taken, I was trying to switch over to strictly a retail business.

Q. About 1945 or thereabouts then you began to devote more of your time to the management of the store than you did to the paint contracting?

A. Yes.

Q. Now, during all of this time, Mr. Paddock, who was the manager of Paddock Paint and Furniture Store?

A. I was.

Q. Who did the buying of supplies and inventory? [82]

A. I did.

Q. When you entered the furniture business who did the buying of furniture?

A. I did.

Q. And you still do. Have you always done the buying for the store?

A. With the exception of one or two occasions I sent my furniture man out to buy.

Q. Has Mrs. Paddock ever really worked in the store in any—what you might call a managerial or executive capacity?

A. Well, I don't quite get you there.

Q. Well, we have covered one point—buying, and who sets the size of the inventory that you have been carrying?

A. Well, you are speaking—she has written out the orders for the buying but I always stated the quantity to buy, if that answers the question.

Q. In other words, who selected who you were going to buy your items from? Did you select your supplies or did she?

(Testimony of Harold D. Paddock.)

A. No, I selected them.

Q. Who decided on what amounts of, let's say, paints you were going to buy at any one time from any one supplier?

A. I always did.

Q. Who decided how much furniture you were going to buy from any one company?

A. Well, I have mainly, but I have a furniture manager that does [83] lots of buying, quantity buying, that I don't question his ability too much on, however, if I take a trip Outside, why, then I do the quantity buying and buy what I think will sell.

Q. Who has—let's see, Mr. Godchaux does your bookkeeping, does he not?

A. Yes.

Q. Now?

A. No, I have a bookkeeper, but he does——

Q. Your accounting?

A. The auditing and reports of income tax.

Q. Who selected Mr. Godchaux?

A. I did. I had him as bookkeeper, part time bookkeeper, several years back, from the time he was keeping various accounts around town, including Ketchikan Spruce Mills.

Q. Who hires and fires the employees of the store?

A. Well, mainly I do.

Q. Have there been occasions from time to time when Mrs. Paddock might either employ or discharge one?

A. She may have hired an employee for the store after we might have agreed on it between us



(Testimony of Harold D. Paddock.)

or something, but I have always hired all my own painters and fired them.

Q. Now, when you found it necessary from time to time to borrow money in the course of your business who has negotiated those loans?

A. I have. [84]

Q. Has it been necessary for you to have Mrs. Paddock's signature on these loans which you got?

A. No, only in my absence and with the exception of the last loan I made which the bank felt was an uncertainty.

Q. That was after the divorce was started?

A. Yes.

Q. Or after the separation? A. Yes.

Q. Prior to that time you borrowed up to \$45,000.00 on your own signature?

A. That is right.

Q. And you have dealt with both the Bank of Alaska and the First National Bank, have you not?

A. Yes.

Q. Now, you have had two bank accounts, one at the First National Bank and at the Bank of Alaska, have you not? A. That is right.

Q. Those accounts are in the name of H. D. Paddock or Paddock Paint and Furniture Store, are they not?

A. Yes. They were originally set up because of the paint contracting and I did work for them both.

Q. Now, Mrs. Paddock's signature has always been honored on both of those accounts, has it not?

A. Yes.

(Testimony of Harold D. Paddock.)

Q. Whether she was writing checks for the business or for operation [85] of the house or whatever it might be, she had authority to write checks on both of those accounts?

A. That is right.

Q. Do you have other employees who are authorized to write checks?

A. I have from time to time.

Q. There are two employees who write checks on the account of the First National Bank now, are there not, or is it the Bank of Alaska?

A. No, neither one.

Q. I see. The bookkeeper and someone else was authorized for a period of time to write checks on the account, were they not?

A. Yes.

Q. Now, Mr. Paddock, how did it happen that a mother with two relatively small children was spending time down at the store rather than being home taking care of the house?

A. Well, didn't like to stay home, maybe. I don't know.

Q. Just liked to take part in the business, is that the idea?

A. Yes, I'd say so.

Q. Was that particularly at your request that she came down and participated in the business as she has?

A. No.

Q. Have you ever suggested that you preferred, that she might put her time to better advantage to take care of the home than the business? [86]

A. Yes.

Q. As a matter of fact, that has been one of the

(Testimony of Harold D. Paddock.)

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A. No.

Q. Have you ever suggested that you preferred, that she might put her time to better advantage to take care of the home than the business? [86]

A. Yes.

Q. As a matter of fact, that has been one of the



(Testimony of Harold D. Paddock.)

sources of irritation that led up to this incompatibility, has it not?      A. That is right.

Q. Do you feel that Mrs. Paddock has contributed, let's put it this way—strike that—in what proportion, being fair to both of you, to the best of your ability, in view of the situation, in what proportion do you honestly feel that Mrs. Paddock has contributed to the rather pleasant financial position in which you find yourself today? I mean, by participating in the business what do you feel she has contributed to it?

A. Not any more than the salary of anybody else.

Q. In other words, she actually—in your opinion she actually contributed just about, perhaps a little more to be fair about it, than the salary which you would have had to pay anyone else to do the same work?      A. That is right.

Q. Well, there have been some expenses in connection with that, has there not, in the way of maids, housekeepers—who was taking care of the children while she was down at the store?

A. Well, the first couple of years of marriage her mother kept them and hired housekeepers and women to come in and help with the housework.

Mr. Davis: I am sorry, Mr. Paddock, I am not understanding [87] what you are saying.

A. I said in the stages of when the kids were younger that we hired housekeepers to take care of the kids, to come in during the day and Mrs. Paddock took care of them at night.



(Testimony of Harold D. Paddock.)

Q. (By Mr. Kay): Course once the girls got to be, in later years, in school, well, that was not so much a problem, was it?

A. That is right.

Q. You have never adopted the two girls, have you, Mr. Paddock? A. No.

Q. Although they have used your name and you have been a father to them down through the years?

A. That is right.

Q. Now, Mr. Paddock, did you have occasion, while we were preparing for this suit, to go over your income tax returns for some of these previous years? A. Yes.

Q. Have you and Mrs. Paddock ever filed a partnership tax return? Do you know what a partnership tax return form is? A. No.

Q. Well, do you know whether you have ever filed one or not?

A. I have filed a partnership return?

Q. You and she have never filed a partnership return, is that correct? A. That is right.

Q. Since about 1948, however, you have filed joint tax returns [88] as husband and wife, have you not? A. That is right.

Q. Prior to that time Mrs. Paddock's salary was shown as a business expense of the business, was it not, on your personal tax return?

A. That is right.

Q. That was done, I presume, at the advice of whoever was keeping your tax records and books at that time? A. Yes.

(Testimony of Harold D. Paddock.)

Q. As a matter of fact, she drew no salary as such but was permitted to draw whatever she wanted or needed from these bank accounts?

A. That is correct.

Q. When was that piece of property out next to the home bought, Mr. Paddock? That is the one that is in Mrs. Paddock's name?

A. About two years ago.

Q. Mrs. Paddock bought that on her own, did she not?      A. Yes.

Q. I think you were Outside and didn't know about it until your return?

A. That is right.

Q. Mr. Paddock, approximately how much money have you drawn out of the business for your own use during the year 1953 down to date, do you know?      A. \$100.00 a month. [89]

Q. You have an apartment there in the building, do you not?      A. That is right.

Q. So you have drawn about \$1,100.00 so far this year?

A. I would say about \$1,200.00.

Q. Is the business doing as well this year as it did last year, Mr. Paddock?      A. No.

Q. There is somewhat of a slump noticeable in the business, is there not?

A. Well, there is a considerable slump and even though you do have values, we are still not making as large profit as we have in the past. I'd say partially due to too much competition, too many furni-

(Testimony of Harold D. Paddock.)

ture stores, some of them going broke, closing out. It has made it very difficult to——

Q. Now, can you think of anything, Mr. Paddock, that I overlooked that I should ask you about before I finish my examination?

A. I think you have done pretty well.

Mr. Kay: Your witness, Mr. Davis.

The Court: Court stands recessed for ten minutes.

Recessed 3:06 o'clock p.m. Reconvened 3:20 o'clock p.m.

The Court: You may proceed, Mr. Davis.

### Cross Examination

By Mr. Davis:

Q. Mr. Paddock, you had Mr. Godchaux the accountant draw up a tentative balance sheet and profit and loss statement for the first eleven months of 1953, did you not? A. Yes.

Q. And you brought that to court here?

A. Yes.

Q. I hand you that paper and ask if that is the tentative profit and loss statement and balance sheet prepared by Mr. Godchaux for the first eleven months of 1953?

A. This was mainly drawn up by my bookkeeper and not Mr. Godchaux.

Q. Did Mr. Godchaux check it?

A. I believe not.

Q. Then just drawn by your bookkeeper in the store? A. That is right.

(Testimony of Harold D. Paddock.)

Q. Has drawn it through November 30, 1953?

A. Yes.

Q. I'd like to then at this time, Your Honor, offer this statement in evidence, if I may.

The Court: Is there any objection?

Mr. Kay: I have no objection, only to point out that that will, of course, be superceded by the completed accounting at the end of the year by Mr. Godechaux.

The Court: Very well, it may be admitted and marked Plaintiff Exhibit No. 4. [91]

(The document above referred to was thereupon received in evidence as Plaintiff's Exhibit No. 4.)

The Court: As of November 30, Mr. Davis?

Mr. Davis: November 30.

Mr. Kay: Incidentally, we don't vouch for the accuracy of that.

The Court: That is understood.

Q. (By Mr. Davis): Now, the inventory on that balance sheet is an estimated inventory, I believe?

A. That is right.

Q. Outside of the inventory being estimated, the rest of the figures are either taken from last year or additions that you bought this year and that sort of thing, is that right? A. Yes.

Q. And liabilities shown are the actual liabilities as of the end of November? A. Restate that.

Q. I said the liabilities shown on the balance sheet are the actual liabilities as of the end of November, 1953?

(Testimony of Harold D. Paddock.)

A. Well, I'd say partially arrived at from January figures.

Q. I think maybe you misunderstood me. The liabilities in the notes payable and accounts payable and that sort of thing are the actual figures taken as of the end of November, are [92] they not?

A. That is right.

Q. I don't believe that that particular statement makes any reserve for taxes, for income taxes?

A. No.

Q. Now, I notice on the statement, on the tentative statement and realizing, of course, that it is tentative by reason of the fact you don't have a final inventory, I notice that that statement shows a much healthier picture for net worth than the one as of the end of the year, last year, is that right?

A. I would have to compare the two. Offhand I don't—

(Document is thereupon handed to the witness.)

Q. Your net worth of the entire business and property last year, Mr. Paddock, at the close of business last year was a hundred and—what is it—a hundred sixty three thousand odd dollars?

A. That is right.

Q. And the net worth shown on the tentative statement is how much?

A. What they have here is two hundred thirty one.



(Testimony of Harold D. Paddock.)

Q. I think you are reading the wrong line. That figure right above that.

A. Oh, yes, one seventy two.

Q. Well, now doesn't it say right at the bottom—net worth \$231,000, isn't that what it says there? May I see it?

(Document is handed to Mr. Davis.) [93]

Q. I think that is correct, the \$231,000.00 is the total of all liabilities against the net worth. What is the total of net worth on the statement?

The Court: Mr. Davis, wouldn't the paper and exhibits speak for themselves?

Mr. Davis: I presume they will.

Q. (By Mr. Davis): Now, Mr. Paddock, what is the first year that you paid income tax to the United States Government?

A. Are you speaking of Anchorage?

Q. I am speaking of your business here. What is the first year you paid income tax to the Federal Government?

A. About 1934, prior to that my business was carried under the name of McNally and I merely paid in one half of the income tax and went under his name.

Q. Mr. Paddock, are you certain that you paid income tax to the Federal Government as early as 1934?

A. Well, I would say it was '34 or '35. It was after I bought out his half interest that I paid income tax.

(Testimony of Harold D. Paddock.)

Q. Do you have any idea at all what the income tax exceptions were that far back?

A. Offhand I couldn't tell you, no.

Q. As a matter of fact, small businesses didn't pay any income tax, Mr. Paddock, until '40, around there, isn't that correct?

A. I know I had to file some kind of return.

Q. Are you talking now about your City, Personal Tax, Personal Property Tax Returns?

A. Well, I don't remember that far back. I remember when we started paying income tax. If there was any income tax to pay for businesses I paid them.

Q. Yes, but you don't remember now as to when it was that you started paying income taxes, is that correct?

A. Offhand I couldn't say, no, sir.

Q. Do you have books, Mr. Paddock, that go back as far as 1938 reflecting what your business did?

A. I have most of them, but that is so far back it would be a problem to find them all.

Q. Where do you keep those books?

A. I—generally after a period of three years are filed in some paint cartons and marked what they are and filed away.

Q. And where would they be now?

A. They would be in the basement and they would be in the attic of the warehouse.

Q. When you testified awhile ago that you thought your net worth was \$15,000.00 to \$20,000.00

(Testimony of Harold D. Paddock.)

at the time you were married, your equity in your property, I think is the way you put it, your property and your business what did that consist of, Mr. Paddock?

A. Ford Pickup-truck, ladders, drop clothes, paint brushes, all of the necessities of a paint contracting business. [95]

Q. Well, all right, that wouldn't exceed \$2,500.00 at the outside would it, at that time?

A. Well, the car alone would be probably \$2,000.00 at that time.

Q. How old was the car? How old was the pickup-truck? A. It was new.

Q. Brand new at the time you were married?

A. Yes.

Q. All right, taking the car as being \$2,000.00 how much would there have been in paint contracting supplies, ladders, drop clothes and stuff of that kind?

A. Well, there are various things that I have. \$1,000.00 or \$2,000.00 in brushes awfully easy and still haven't a big pile of brushes.

Q. At the time you were married there was very little business in town, was there?

A. There was considerable in the paint contracting business because I was practically the only paint contractor here.

Q. But there wasn't any new construction going on here at all, was there?—outside of the high school building or what is now the Junior High School building, they built that about 1933?

(Testimony of Harold D. Paddock.)

A. Considerable new homes being built, of large commercial construction there wasn't much.

Q. Is it your testimony that in 1938 there was considerable new homes being built, Mr. Paddock?

A. There was considerable increase in the beginning of population along about that time.

Q. As a matter of fact, Mr. Paddock, there wasn't any increase in population until 1941 or 1940 when the Army came, isn't that true?

A. I would say, no.

Q. What was the population of Anchorage in the 1940 census, if you know?

A. About three thousand.

Q. Actually five, wasn't it?

A. I couldn't state that figure. Roughly I would say three thousand.

Q. All right.

A. When I first came here there was fifteen hundred.

Q. And that was 1931, you say? A. Yes.

Q. As a matter of fact, Anchorage did increase a little bit at the time they put in the Matanuska Valley Colony in 1935, did it not?

A. I would say, yes.

Q. Then wasn't it more or less stationary from that time until the Army moved in in 1940?

A. Yes, increased rapidly after that.

Q. All right. I wish that you would get out, please, the books that you kept during the years 1937, '38 through 1940 so we [97] can give them to Mr. Godchaux. Now, when was it that you



(Testimony of Harold D. Paddock.)

started having an Auditor go over your books at the end of the year?

A. Well, I have always had my books audited and somebody make out the income tax report.

Q. All right, going back to the year 1939, 1938, who did your work at that time, your auditing?

A. Probably, along that time probably Bill Head.

Q. And for how long a period of time then did Bill Head keep your books?

A. Oh, perhaps two or three years.

Q. And who took over after Bill Head didn't keep the books?

A. Well, for a couple of years I had an accountant. I can't recall his name right offhand.

Q. Hand or Hart or something like that?

A. I just can't say his name right at—

Q. Did you have Jones and Anderson for awhile? A. Yes, I did.

Q. And you have had Godechaux now for the last five or six years? A. That is correct.

Q. All right, now what year was it that you mixed up with the Savage Painting Company contract? A. '48, '49.

Q. Now, in that case, Mr. Savage, I believe, had a contract with The Alaska Railroad to paint a certain bridge, is that right?

A. That is right. [98]

Q. And you guaranteed performance of his work?

A. I co-signed the bond, yes.



(Testimony of Harold D. Paddock.)

Q. And when Mr. Savage wasn't able to complete the contract then you had to take over and finish up the job, is that right?

A. That is right.

Q. Now, you didn't make any particular money out of that job, did you?      A. No, sir.

Q. In fact you lost money?

A. That is right.

Q. And that required two seasons, didn't it, on that job?      A. That is right.

Q. Two summer seasons and you spent those two seasons working on that job with the Railroad, did you not?      A. Majority of it, yes.

Q. And then one season, I believe at least one season, you went fishing down the Inlet, did you not?      A. About two months.

Q. What year was that?      A. '42.

Q. Was there more than one year or just the one?      A. Well, I fished two years.

Q. And for about two months each year during the fishing season?

A. No, I didn't stay the whole fishing season. The first year [99] I had an opportunity to make more money at that time in fishing than I was making in the paint contracting.

Q. During that time Mrs. Paddock took care of the store and whatever there was to do, did she not?

A. As far as the store. I had a paint foreman that ran the paint contracting and paint estimating.

Q. And while you were down the Inlet anybody

(Testimony of Harold D. Paddock.)

that had any business came to Mrs. Paddock, is that right?

A. Well, I would make a trip into town almost once a week.

Q. But you weren't available during the week. You weren't available while you were down the Inlet and no way of getting in touch with you?

A. Yes.

Q. How?

A. Well, this daily service from the local cannery. Tender came to the fishing site each day.

Q. All right, to get back to what—then during the time you were not here Mrs. Paddock had full charge of the store, is that right?

A. Yes and no. She had no authority or ability of contracting paint jobs which was mainly the source.

Q. I am talking now about your store. She did whatever buying there was to be done or that sort of thing or what selling was done in the store, she did, isn't that right?

A. Well, I would say very little buying would be done during [100] this time. The selling, yes.

Q. This is summer season, isn't it?

A. Pardon?

Q. Summer season we are talking about?

A. Yes.

Q. And most of the paints that—most people that do painting do it in the summer season?

A. No, not necessarily. The exterior they have

(Testimony of Harold D. Paddock.)

to do in the summer. The interior can be painted at any time.

Q. But as a matter of fact most of the contract jobs were let in the summer and that is when the painting was done, isn't that right?

A. I would say, no, that I kept lots of hotel work and that type of work, which was their slower season, that I did during the winter.

Q. I am talking now about selling paint through the store. Most of the paint that was sold through the store would be sold in the summertime, anyway a large part?

A. It will run heavier to sales in the summer than winter due to the fact that you are doing outside painting.

Q. All right, now during the time you were up on the bridge job, the same thing was true, was it not? Mrs. Paddock was in charge of the store while you were gone?

A. Yes.

Q. Now, as a matter of fact, is it your testimony that you went [101] ahead and ran this business without consulting Mrs. Paddock at all about it?

A. Will you restate that question?

Q. Didn't you, as a matter of fact, and Mrs. Paddock consult back and forth about these various jobs, about the way the business was going to be run, when you were going to borrow money and that sort of thing?

A. No, if I figured the paint job, why, she wouldn't know whether it was enough or too little.

Q. You are talking now again about the con-

(Testimony of Harold D. Paddock.)

tracting business. I am talking about the general overall business. Isn't it a fact that you did consult and advise with her as to various things—operation of the business, when you transferred from a paint store to furniture store—didn't you actually consult with her and advise with her on those things?

A. In some instances, yes, other instances, no.

Q. Now, in connection with this money that you borrowed last summer. You remember that you made an arrangement to borrow money with the bank, remember that? A. Yes.

Q. And the bank, I believe, required her signature on the note, did they not?

A. They did due to the fact this was in litigation of settlement.

Q. Now, as a matter of fact, it wasn't in litigation at that time, was it? Suit wasn't filed for several months after this note, [102] isn't that true?

A. I believe that is true, but the reason they gave me was just as I have stated.

Q. All right, but what was—as a matter of fact the bank would not let you have the money until such time as she signed the note and mortgage, is that not correct?

A. That is correct.

Q. And in the meantime she was refusing to sign the note and you had checks bouncing around town because you didn't get the money, isn't that right?

A. No, I had no checks bouncing.

Q. Well, you had written checks you couldn't

(Testimony of Harold D. Paddock.)

cover because you didn't have this loan, isn't that correct?

A. I had made some purchases with the tentative settlement that I would go ahead and run the business and when our settlement wasn't reached it left me in a short spot there for a while.

Q. All right, you talked about having a housekeeper from time to time to take care of the children. That was a very small portion of the time, was it not?

A. Yes, probably 10:00 o'clock in the morning until 3:00 or 4:00 o'clock in the afternoon.

Q. But you say it was for a relative short period of time over the years. You didn't have a housekeeper very much of the time over the years, did you? [103]

A. Well, up until a few months ago there was a housekeeper came in once a week and cleaned house and did various things around the house.

Q. That would be just somebody coming in to clean house?      A. Yes.

Q. All right, now you said that you had drawn \$100.00 a month only during the year 1953?

A. That is about right.

Q. Now, you live in an apartment owned by the business, don't you?

A. I live in an apartment above the store building, yes.

Q. That building is listed as part of the assets of the business?      A. That is right.



(Testimony of Harold D. Paddock.)

Q. Your lights and your fuel are paid for by the store, is that correct?      A. That is right.

Q. Now, you have an automobile, I believe, old one?      A. I have a '47 Dodge.

Q. And the expenses of keeping that car up likewise are paid through the business, are they not?      A. That is right.

Q. And I believe this year you went to the States and spent a couple of months there, is that right?

A. About six or seven weeks.

Q. When did you go out and when did you come back? [104]

A. About the last week in January.

Q. Then when you went out when did you come back?

A. Well, it was sometime in the latter part of February.

Q. Well, it was very near two months, was it not, that you were gone?

A. It was close to that, yes.

Q. And I believe your expenses out of that trip were all paid for out of the store?

A. They may have been—part of them, yes, I would say so.

Q. All right, now in connection with the figures, Mr. Kay quoted here as to Mrs. Paddock's drawings this year, you have included the trade-in price of that car, have you not?      A. That is right.

Q. So the \$15,000 and some odd dollars he talked about includes the trade-in value of the car?

(Testimony of Harold D. Paddock.)

A. That is right.

Mr. Davis: I think that is all, Mr. Paddock.

The Court: Any redirect?

Mr. Kay: Yes.

Redirect Examination

By Mr. Kay:

Q. That amount is actually in excess of \$16,000 is it not? A. Yes. [105]

Q. And I believe the trade-in value of the car was \$2,900.00? A. \$2,900 I believe.

Q. Now, Mr. Davis questioned you about your contracting business. Right about the time of your marriage how many contractors were there in town at that time?

A. When I first came here there were seven and along about that time there was not more than three.

Q. What percentage of paint contracting would you say you were getting?

A. 75 or 80 percent.

Q. You had by far the most successful business, did you not? A. That is right.

Q. Now, Mr. Davis also questioned you about consulting and advising with Florence from time to time on these investments and changes of business, you said from time to time you did consult with her. Were you consulting or advising her in any business capacity or in the normal fact that husband and wife discuss problems with the wife?

A. Well, merely a discussion.

(Testimony of Harold D. Paddock.)

Q. Were you seeking her advice as business advisor or associate?

A. No, I wouldn't figure it would be a good deal on something we generally didn't agree on.

Mr. Davis: Would you read back the latter part of that? I have a hard time understanding.

(The Reporter thereupon read back the last answer.) [106]

Q. (By Mr. Kay): Now, at the time of this last bank discussed here—which bank was that?

A. Bank of Alaska.

Q. You deal with Mr. Mumford all along?

A. Yes.

Q. Did Mr. Mumford know at that time you and Mrs. Paddock was separated and divorce was in the offing?

A. He knew that we were in the process of separating, divorcing.

Q. Well, you had been separated for many months at that time? A. That is right.

Q. Mr. Mumford and you have been business associates and dealt together for years, have you not? A. Yes.

Q. And he was well aware of the situation?

A. That is right.

Q. And he told you that the reason he required her signature was because of the separation and pending divorce? A. That is right.

Mr. Davis: I couldn't object to that, Your Honor. I don't want to.

Mr. Kay: Since it was brought out by——

(Testimony of Harold D. Paddock.)

The Court: Well, there is no use of counsel commenting unless he does something about it.

Mr. Kay: I will rush on to the next question before he does. [107]

Q. (By Mr. Kay): Mr. Paddock, Mr. Davis referred to your living in an apartment owned by the business and car expense was paid by the business, actually what was paid by the business? Who owns that building, Mr. Paddock? A. I do.

Q. It is not owned by any firm which you are aware of? A. No.

Q. It is Harold D. Paddock?

A. That is right.

Q. And the car expense would be the same, would it not, it would come out of one pocket into another? A. That is right.

Mr. Kay: I have no further questions.

Mr. Davis: My point on that, Mr. Paddock is that your actual living expenses are included with these other items, are they not?

A. No, my living expenses, such as groceries and personal expenditures is charged to my personal account.

Mr. Davis: I understand that, but your lights, your heat, your automobile and your trips are paid for outside of the \$100.00 a month you have been talking about?

A. That is right, as far as being used for business purposes.

The Court: The Court has several questions.

(Testimony of Harold D. Paddock.)

Examination by the Court

By the Court:

Q. Do you know whether or not you filed a partnership return and then an individual return in the conduct of partnership? A. No.

Q. Well, isn't it a matter of fact, that you filed one return, which is your own return, even if you are in partnership? A. That is right.

Q. Do you think the plaintiff has been a good mother to her own children? A. Yes.

Q. The Court understood you to state that you went out of the contracting business in July 1953, is that correct? A. That is right.

Q. The Court understood you to state that most of your money had been derived from the contracting business, is that correct?

A. Earlier stages of it, yes.

Q. Then why did you go out of the contracting business?

A. Well, contracting business was getting like the furniture business is today—too much competition.

Q. If that is the case, why did you keep the store and give up the contracting business? They are both competitive.

A. That is true, but there wasn't money to be made in the last few years in the paint contracting business. There had been [109] in the past. I don't know if any one of us has made any money in the last few years.

Q. Isn't that true of the furniture business now?



(Testimony of Harold D. Paddock.)

A. At the present date, yes.

Q. Wasn't that also true as of July 1953?

A. No.

Q. Well, isn't it a fact that you had the Warehouse Sales in 1953 over here on 5th Avenue?

A. Yes, that is right. I was still doing quite a volume, but not as much profit as I had been, more or less, competing with their prices.

Q. Weren't you doing quite a volume of business also with the paint contracting and not making as much profit likewise?

A. For quite a few years I have been cutting down, cutting down to only just two or three men in the paint contracting which more or less run themselves, supervised their own work and I haven't been in that contracting field, I haven't taken any large jobs for several years.

Q. The Court still is in doubt as to what was the real reason why you discontinued the contracting business and went into the furniture business entirely in July 1953 when you testified——

Mr. Kay: It is still paint and furniture.

The Court: Very well.

Q. (By the Court): ——you just testified that the contracting business was not [110] so profitable as likewise was not the furniture business. I can't understand that.

A. Well, I made a statement that at the time I went into the furniture business I was about the third store to be in the furniture business.

(Testimony of Harold D. Paddock.)

Q. I am interested in '53, not when you went into business.

A. And you want to know why I wasn't making so much money?

Q. No, you testified, as the Court recalls, that you made most of your money in the paint contracting business, you also testified there wasn't much money in the furniture business. The Court also recalls that you testified that you went out of the paint contracting business in July '53, now, why did you go out of the paint contracting business where you had made most of your money and still remain in the furniture business where you likewise were not making much profit. What is the reason?

A. For the reason that I put my money from the contracting business into the furniture business and have a considerable more inventory in furniture and paint business. I devoted my time to sell—and planned for years to get away from paint contracting business.

Q. Then the reason is you wanted to get away from the contracting business?

A. That is right.

The Court: Well, the two statements are irreconcilable. [111]

Mr. Kay: What two statements?

The Court: One that he made a lot of money from the contracting business——

Mr. Kay: Let me—could I ask a couple more questions?

The Court: Yes, the Court is through now.

(Testimony of Harold D. Paddock.)

Further Redirect Examination

By Mr. Kay:

Q. The "hayday" you might say, of paint contracting business as far as you were concerned as it being your major business was in the years prior to 1945?

A. That is right, and you had a labor problem in during the way that you couldn't get qualified workmen and quantities of work from laborers that you used to get in the past and it was unpredictable of how to figure a job as to how you were going to come out on it.

Q. Up until that time you had a balance of where your store was relatively small and your paint contracting business was large, isn't that correct?      A. That is right.

Q. Now, just because you would rather be in the furniture and paint store business, you have shifted that balance, isn't that correct? Now you have a large store and paint business and you dropped out of the paint contracting? [112]

A. That is correct.

Q. And that has been a matter of taste and choice on your part and matter of highly competitive nature of the paint contracting business as it exists in Anchorage today?

A. That is correct, and sell paints to the paint contractor instead of competing against them in competitive bidding.

Q. Would that disasterous experience you had with The Alaska Railroad bridge have had a little

(Testimony of Harold D. Paddock.)

bit to do with your getting out of the paint contracting business?      A. Yes, sir.

The Court: Well, counsel can see the confusion in the Court's mind based upon his own testimony.

Mr. Kay: It is not clear to me just what the confusion is. He wanted to get out of the business.

The Court: That is right. This is the first time he stated that.

### Further Recross Examination

By Mr. Davis:

Q. Mr. Paddock, when was it that you moved the paint store into the McNally building? What year was that?      A. '45 I believe.

Q. Now, isn't that the year that you expanded your store? Up to that time you didn't have much room for a store? [113]

A. That is right.

Q. When you moved over across the street you expanded and took on paint and wallpaper and had a big store from that time on, isn't that right?

A. Well, the main reason we went into the furniture business was during frozen rental rates by the O.P.A., that didn't allow rental rates to increase with property increases and other expenses.

Q. Now, Mr. Paddock, the only way the rentals might enter into this was the rental of apartments upstairs?

A. No, where the furniture store is. Now that was all apartments.

Q. That was apartments at that time?

(Testimony of Harold D. Paddock.)

A. Yes.

Q. But to get back to my original question your paint store actually expanded two or three times in space from the time you moved across the street to your present location, did it not?

A. Yes.

Mr. Davis: That is all.

Mr. Kay: No further questions.

The Court: You may step down, Mr. Paddock.

(The witness was thereupon excused and left the stand.)

Mr. Kay: Defense rests, Your Honor.

The Court: How much time does counsel want for argument?

Mr. Davis: I would like to call Mrs. Paddock for a couple [114] of questions on rebuttal, if I may. As far as argument is concerned I would just as soon leave the matter without argument or if Your Honor wishes it argued I would prefer to wait until we get the account in so we know what we are talking about.

The Court: Very well, Mrs. Paddock may be called for rebuttal.

Mr. Kay: Fine.

Mr. Davis: Looks good to me.



## FLORENCE PADDOCK

recalled as a witness on behalf of the plaintiff on rebuttal, having been previously sworn, testified as follows:

By Mr. Davis:

Q. Mrs. Paddock, did you hear Mr. Paddock testify that the only reason you went to the store was because you didn't want to stay home?

A. Yes.

Q. Did you hear him testify that he had asked you to stay home, he didn't want you down at the store, that you wouldn't stay home and work at home? A. Yes.

Q. Now, as a matter of fact, Mrs. Paddock, do you recall any occasion, until the last few months, that Mr. Paddock ever told you that he didn't want you around the store? A. No. [115]

Q. As a matter of fact, were you working in the store with the consent and on your own mutual agreement?

A. Sure, because I wanted to help out.

Q. And did he want you to help out?

A. Well, sure.

Q. That is all.

Mr. Kay: No questions.

The Court: You may step down.

(The witness was thereupon excused and left the stand.)

Mr. Davis: At this time, if the Court please, I would like to request that Mr. Paddock be required to furnish the sum of \$500.00 to Mrs. Paddock as

balance of moneys that it would be necessary for her to have to live this month and that until the matter is finally disposed of that Mr. Paddock pay Mrs. Paddock the sum of \$700.00 per month. I also would like to request that Mr. Paddock either pay to Mrs. Paddock or pay the bills, one or the other, in the amount of roughly \$2,000.00 which have been incurred by reason of the fact he has been cutting down the payments. I also would like to request that Mr. Paddock at this time make a payment toward counsel fees in connection with this case. Now, as to the first matter I am willing to consent that any moneys that are paid to Mrs. Paddock at this time and during the course of final settlement in this matter may be taken off any settlement as has been agreed upon or ordered by the Court. As far as attorney fees are concerned, I would like Mr. Paddock to [116] pay those.

The Court: Does counsel for the defendant have anything to say?

Mr. Kay: I certainly do, Your Honor. In the first place it is pretty incredible that there should be \$2,000.00 worth of unpaid bills incurred by Mrs. Paddock in connection with her living expenses when Mrs. Paddock has received \$16,000.00, minus, let's say, \$3,000.00—\$2,900.00, would be \$13,000.00 in the first eleven months of this year and has \$2,000.00 worth of bills unpaid. There is something wrong. I can't understand anybody who can't live and maintain herself under reasonable circumstances on the sum in excess of a thousand dollars a month and still get \$2,000.00 worth of bills to be

paid and if there is going to be a property settlement here, I think those bills should come out of it and I think the amount of money received this year should be taken into consideration in reaching any figure in this case and if the Court is going to reach a property settlement, I should think Mr. Davis would be able to wait for his attorneys fees until that settlement is reached and Mrs. Paddock pay her own attorney the same way as I expect Mr. Paddock to pay his. I see no reason why Mr. Paddock should pay her attorney or the extra bills. Now, if the Court is setting a reasonable sum for payment to Mrs. Paddock, pending decision of the case, I have no objection to that whatever and he certainly has been making payments of reasonable sums, it seems to me. It is true in the last few months he, rather than just hand over a thousand dollars or so, has gone and tried to pay some of these bills and paid them first and then handed to her the balance, but I don't see anything wrong in that, however, we are perfectly willing to hand her whatever amount the Court says is fair and reasonable, provided that that money isn't tossed away somewhere and then Mr. Paddock expected to pay a sum more—thousand dollars worth on top of that. I think we ought to be reasonable. He doesn't have a lot of money.

Mr. Davis: Maybe Mr. Kay misunderstood my suggestion. It was that the bills be paid out of Mrs. Paddock's settlement, whatever it may be. Now, I don't know, Mr. Kay says there couldn't be any such bills, but the fact of the matter the evidence

stands undisputed that there are such bills and, of course, it seems obvious that a person who is living on a scale of something in excess of a thousand dollars a month, then they are cut down to \$200.00 a month, plus payment of lights and oil, it must be evident there is going to be some distress and the testimony stands undisputed that at the present time there are about \$2,000.00 worth of bills to be paid. I don't care whether Mr. Paddock pays direct itself or whether it is paid to Mrs. Paddock to pay, but I would like to have him pay it.

The Court: Well, the Court is concerned about the fact that the plaintiff—is that \$13,000.00 to justify the Court that she should be paid some additional sums of money. There is no evidence of sickness or insinuating circumstances. How does [118] counsel justify that motion?

Mr. Davis: Your Honor, to begin with the plaintiff worked undisputed for three or four months this year and received no money for it. That is the first thing—no money. In the second place, if you look at the balance sheet you will see that this business is making roughly \$25,000 to \$26,000 net this year, at least it shows there just under \$26,000 for the first eleven months. If she has any interest in that business, and I think all the evidence shows that she does, certainly she is entitled to some money out of that business. Now, what she did with the \$13,000 earlier this year I don't know, except that I know what it cost me to live here and I know that large amounts of it went for living expenses and send those kids to school and that



sort of thing. The fact of the matter is that she was getting \$1,000.00 and later \$800.00 and so forth and within the last four or five months she has been getting \$600.00, \$500.00, \$400.00 and \$200.00, so it is obvious that she is living on the same scale that she was before. She can't meet her payments out of what she is getting now.

The Court: Well, the Court feels that something should be paid to her pending the determination of the matter, but the Court is concerned about—counsel when you make no proof of the circumstances beyond the statement that there is \$2,000.00 odd dollars and there is no rebuttal, and yet there has been over \$13,000.00 paid to her. [119]

Mr. Davis: We admit she has drawn roughly \$13,000.00 in cash this year.

The Court: Well the Court feels this: That at least she should be paid \$750.00 pending the determination of this matter and counsel for the defendant will have no objection?

Mr. Kay: No objection.

The Court: As to attorneys fees, the Court sees no reason why counsel can't wait until determination of the matter which will be made promptly and which is demand payment and which is standard procedure at this time. Now, as to the bills the Court would like to have Mrs. Paddock take the witness stand as to these bills.



## FLORENCE PADDOCK

recalled as a witness on behalf of the plaintiff, having been previously sworn, testifies as follows:

By the Court:

Q. Mrs. Paddock, what are these bills comprised of?

A. Well, I owe my aunt \$1,000.00. Do you want me to tell you the amounts?

Q. Yes. A. Owe my aunt \$1,000.00.

Mr. Kay: What is her name?

A. Mrs. Decker.

Q. (By the Court): Just enumerate. [120]

A. And my Mother \$500.00, then I owe \$135.00 and my light bill.

Q. What is the \$135.00?

A. That is for purchases in the States—and \$350.00.

Q. And whom is that owed to?

A. Theresa Shop.

Q. Is that for Christmas purchases?

A. No, that was before.

Q. Over a period of time? A. Yes.

Q. And what other bills? That makes \$1,885.00.

A. Well, I owe insurance on my car.

Q. How much does that amount to?

A. \$135.00. I think there are some smaller ones but I can't remember them right now.

Q. How about—you testified that you owed some electric bills, is that right?

A. I imagine around \$35.00.

Q. Did you say, Mrs. Paddock, this morning

(Testimony of Florence Paddock.)

when you testified that you owed for tuition of your daughters fees?      A. Oh, yes.

Mr. Davis: How much is that and to whom?

A. Well \$185.00.

The Court: Who are they owed to?

A. Reed College and then board and room for my younger daughter to her aunt. [121]

The Court: That is \$85.00?

A. Yes.

The Court: Thank you.

Mr. Kay: Could I ask a couple of questions?

The Court: The Court is—we shouldn't open up the trial now. Counsel made the motion, if counsel feels you are justified in making the request, why, go ahead. Do you desire to ask further questions?

Mr. Kay: No, Your Honor.

(The witness was thereupon excused and left the stand.)

The Court: Well, it appears to the Court that there are a number of these bills that should be paid, the insurance on the car, electricity, Reed's College and Board and Room. After all the defendant married the plaintiff at the time she had two children and assumed the responsibility and the Court feels, under the circumstances, that is not unreasonable. Also, the question of purchases in the States for \$135.00, I suppose that is for the children. The Court then instructs the Clerk to enter a minute order that the defendant be required to pay \$135.00 on purchases in the States, \$100.00 payment for Theresa Shop—

Mr. Kay: I think that bill—Mr. Paddock thinks he has already paid that bill.

The Court: Well, if he hasn't then he should pay something towards that. \$135.00 on insurance, \$35.00 on electricity, \$100.00 to Reed's College for tuition and \$85.00 for the board and room and also the Court feels that for the months of November and [122] December the total sum should be paid to the plaintiff, in the sum of \$750.00.

Mr. Kay: November and December?

The Court: November and December because the testimony——

Mr. Kay: Your Honor, could we take into consideration the amounts of these payments?

The Court: Well, you are taking into consideration what he has paid by way of the \$200.00 this month, that would leave \$550.00 balance.

Mr. Kay: But, in addition to the \$200.00 which he gave her cash he paid \$300.00 worth of her direct living expenses for the month, if you see what I mean, so he really has paid her \$500.00. Now, if you want it brought up to \$750.00——

The Court: Well, the Court feels—this is Christmas time, the plaintiff has worked together for a long time, after all she is entitled to some consideration.

Mr. Kay: No doubt about it. It is just a question of how much consideration. Just a question of \$13,000.00, I know I would gag a little even at Christmas time.

The Court: That may be your thinking, but the

Court feels the plaintiff testified she has a great interest in the business and——

Mr. Davis: I wonder if we might have a statement as to what bills have been paid and that sort of thing after we have a check showing what deductions—we don't know what has been [123] paid or anything about it. We would like a statement to that effect.

Mr. Kay: We will give a list of what bills Mr. Paddock has paid.

The Court: Well, Mr. Kay, the Court feels that Mr. Paddock has paid the sum of \$200.00 for the month of December, therefore, he should pay then a sum of \$550.00 to bring it up to \$750.00. I don't remember how much in November——

Mr. Kay: I don't want to argue with the Court at all, but may I merely point out again that he has actually paid \$500.00 for the month of December. He paid \$200.00 in cash and \$300.00 in bills which she would have had to pay if he handed her \$500.00. I appreciate Your Honor's feeling that he should pay the sum of \$750.00, but what I was trying to get up to was the \$750.00 without actually making it \$1,000.00.

The Court: That is right. The Court appreciates that fact, Mr. Kay, but on the other hand the plaintiff has been accustomed to this type of living for over a period of time and until the final determination is made by the Court, the Court feels that the defendant has the duty and obligation to maintain her in that same capacity.

Mr. Kay: There is limit of ability.

The Court: Yes.

Mr. Kay: I don't know what—their unpaid accounts and one thing and another are rather substantial amounts, comparing [124] that with cash in the bank. Let's not get beyond Mr. Paddock's present ability to pay.

The Court: Very well, the Court agrees with counsel in that respect. The Court also feels that for the month of November, to bring it up to the \$750.00, that amount which he did not pay for the month of November should be paid upon these bills, which the Court feels they should be paid at the present time. Then for the month of December, by itself, he should pay the balance of the \$750.00 minus \$200.00.

Mr. Kay: Very well, Your Honor.

The Court: Now, that is a little involved, do counsels parties understand?

Mr. Davis: I think so.

The Court: Very well.

The Clerk: How much again was Theresa Shop?

The Court: \$100.00. This case will be continued until the report of the Master and the Court would urge counsel and the parties to cooperate with the Master so an early determination can be made of this matter and, Mr. Kay, if you have a strong feeling as to the law on this case—you desire to present a brief?

Mr. Kay: Oh, I am going to present a brief, Your Honor.

The Court: The Court would like to have it at an early date.



Mr. Kay: I can't promise to work on Christmas day.

The Court: The Court said "an early date" and the books are not going to be closed until 31st of December, therefore, the [125] Court would like to have it by the 5th of January.

Mr. Kay: Very well, Your Honor.

[Endorsed]: Filed Jan. 25, 1954.

137,156.24 Assets  
49,765.20 Lia  
 87,391.04  
~~77,391.04~~

Deft 2  
Passbook  
 12  
Passbook  
 Subscribed  
 No. G-8926

~~10,000~~

Mrs P

	HP	Mrs. Pad,	Total
Drawing Acct.	<u>1645 97</u>	<u>16,520 27</u>	<u>18,166.24</u>
Ad. to Cap-	8400 <sup>00</sup>	8400 <sup>00</sup>	16,800 <sup>00</sup>
Dr. Hld to remaining Op.	<u>54,378.64</u> <u>62,778.64</u>	<u>34,378.64</u> <u>42,778.64</u>	<u>88,757.28</u> <u>105,557.28</u>
Balance	61,132.67	26,258.37	

M. P. O'Keefe  
 Raczka Draft



[Endorsed]: No. 14877. United States Court of Appeals for the Ninth Circuit. Harold D. Paddock, Appellant, vs. Florence Paddock, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed: September 20, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 14877

HAROLD D. PADDOCK, Appellant,

vs.

FLORENCE PADDOCK, Appellee.

STATEMENT OF POINTS RELIED UPON  
FOR REVERSAL

Comes now the Appellant, Harold D. Paddock, and presents to the above entitled Court, his Statement of Points Relied Upon for Reversal in the above entitled cause:

1. The opinion of the Court, the Findings of Fact and Conclusions of Law and the Decree were signed prior to the defendant having rested his case, and this matter was called to the attention of the Court by a Motion to re-open the case and to set

aside all previous orders, and this Motion was erroneously overruled.

2. The Court was specifically requested to set aside its opinion, Findings of Fact and Conclusions of Law and the Decree, for the reason that they are premature, inequitable, unjust, unreasonable and oppressive as against the defendant, Harold D. Paddock, the Appellant here.

3. That the opinion, Findings of Fact and Conclusions of Law and Decree are based upon a theory of partnership in the business known as Paddock's Paint and Furniture Store, when in truth and in fact, there was no partnership and no proof of partnership, that the property all belonged to Harold D. Paddock before he married the plaintiff, and continued to belong to him at all times, and that the oral finding of the Court that there was a partnership between the parties is not supported by any evidence; is against the clear weight of the evidence, and is against the laws of the Territory of Alaska.

4. That the Court erred further in that the Findings of Fact and Conclusions of Law conflict with the Opinion filed October 8, 1954, and therefore the Findings of Fact and Conclusions of Law were evidently signed by inadvertence and mistake, and it was error on the part of the trial court to refuse to set them aside and correct them.

5. The Court erred in finding in its opinion on page 2 thereof, that both plaintiff and defendant devoted their full time in the development of the



business, because there is no substantial evidence to that effect, and there is plenty of competent evidence against such a finding, and that such finding is contrary to the greater weight of the evidence, and not supported by any evidence.

6. That the Court further erred in finding that each party is entitled to one-half of the real and personal property, because the finding is contrary to law, contrary to the evidence, contrary to equity and justice, and against the greater weight of the evidence.

7. The Court erred further in finding that the defendant's investment in the business prior to the time plaintiff married him was \$10,000.00, when the undisputed evidence showed a greater amount, and this finding should have been to the effect that the defendant owned Lot Two (2) and the East one foot of Lot Three (3) in Block 39, in the original Townsite of Anchorage, Alaska, and also owned the property across the street therefrom, known as the Sunshine Market, prior to his marriage to the plaintiff, as all of the evidence shows that fact to be true.

8. The Court erred in not giving this real property last above described to the defendant free and clear of any claim of the plaintiff.

9. The Court further erred in its opinion filed October 8, 1954, giving the plaintiff \$700.00 a month salary for working in the furniture store for the entire year of 1953, when the evidence showed she did not work there during that period at any time.

10. The Court erred in that, after it ordered

three appraisers to be chosen and a decision and appraisal reached, which decision and appraisal would be final, and before this decision was reached, the court signed the purported Findings of Fact and Conclusions of Law and Decree, over the objections of the defendant.

11. The Court further erred in its finding that the plaintiff is entitled to receive from the defendant \$500.00 per month for temporary support from January, 1954 until October 31, 1954, this being inequitable and unfair, due to the other findings in the opinion and the testimony before the court.

12. The Court erred in making Finding of Fact No. 7, for the reason that the same is inequitable, not supported by competent evidence, and is based upon the theory of partnership existing between the plaintiff and the defendant and is contrary to good conscience, law and equity.

13. The Court erred in making Finding of Fact 8, for the reason that the same is against the evidence in the case, is inequitable, unfair and clearly against the law in this case.

14. The Court erred in making Conclusion of Law No. 5, for the reason it is contrary to law, contrary to equity and good conscience.

15. The Court erred in making Conclusion of Law No. 6, on the last page thereof, for the reason there is no evidence to support such a Conclusion of Law, no finding of fact based upon any competent evidence to give the court any reason to make such a Conclusion of Law.

16. The Court erred in making Conclusion of Law found in Paragraph 3 of the Decree; that the same is erroneous, is unsupported by the evidence, is against the Laws of the Territory of Alaska, and contrary to all equity in the matter.

17. The Court erred in rendering and signing a decree based upon the erroneous findings of fact and Conclusions of Law.

Respectfully submitted,

BELL, SANDERS & TALLMAN,

/s/ By BAILEY E. BELL,

Attorneys for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed November 25, 1955. Paul P. O'Brien, Clerk.

